

By: Senator(s) Williamson

To: Public Health and Welfare

SENATE BILL NO. 2435

1 AN ACT TO AMEND SECTIONS 43-1-2, 43-19-31, 43-19-34,
 2 43-19-35, 43-19-37, 43-19-44, 43-19-46, 43-19-47, 43-19-48,
 3 43-19-49, 43-19-53, 43-19-55, 43-19-57, 43-19-58 AND 43-19-59,
 4 MISSISSIPPI CODE OF 1972, TO TRANSFER THE POWERS AND
 5 RESPONSIBILITIES OF THE CHILD SUPPORT UNIT OF THE STATE DEPARTMENT
 6 OF HUMAN SERVICES TO THE CHILD SUPPORT UNIT OF THE OFFICE OF
 7 ATTORNEY GENERAL AND TO PROVIDE FOR A DIRECTOR THEREOF; AND FOR
 8 RELATED PURPOSES.

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

10 **SECTION 1.** Section 43-1-2, Mississippi Code of 1972, is
 11 amended as follows:

12 43-1-2. (1) There is created the Mississippi Department of
 13 Human Services, whose offices shall be located in Jackson,
 14 Mississippi, and which shall be under the policy direction of the
 15 Governor.

16 (2) The chief administrative officer of the department shall
 17 be the Executive Director of Human Services. The Governor shall
 18 appoint the Executive Director of Human Services with the advice
 19 and consent of the Senate, and he shall serve at the will and
 20 pleasure of the Governor, and until his successor is appointed and
 21 qualified. The Executive Director of Human Services shall possess
 22 the following qualifications:

23 (a) A bachelor's degree from an accredited institution
 24 of higher learning and ten (10) years' experience in management,
 25 public administration, finance or accounting; or

26 (b) A master's or doctoral degree from an accredited
 27 institution of higher learning and five (5) years' experience in
 28 management, public administration, finance or accounting.

29 Those qualifications shall be certified by the State
 30 Personnel Board.

31 (3) There shall be a Joint Oversight Committee of the
32 Department of Human Services composed of the respective chairmen
33 of the Senate Public Health and Welfare Committee, the Senate
34 Appropriations Committee, the House Public Health and Human
35 Services Committee and the House Appropriations Committee, three
36 (3) members of the Senate appointed by the Lieutenant Governor to
37 serve at the will and pleasure of the Lieutenant Governor, and
38 three (3) members of the House of Representatives appointed by the
39 Speaker of the House to serve at the will and pleasure of the
40 Speaker. The chairmanship of the committee shall alternate for
41 twelve-month periods between the Senate members and the House
42 members, on May 1 of each year, with the Chairman of the Senate
43 Public Health and Welfare Committee serving as chairman beginning
44 in even-numbered years, and the Chairman of the House Public
45 Health and Human Services Committee serving as chairman beginning
46 in odd-numbered years. The committee shall meet once each
47 quarter, or upon the call of the chairman at such times as he
48 deems necessary or advisable, and may make recommendations to the
49 Legislature pertaining to any matter within the jurisdiction of
50 the Mississippi Department of Human Services. The appointing
51 authorities may designate an alternate member from their
52 respective houses to serve when the regular designee is unable to
53 attend such meetings of the oversight committee. For attending
54 meetings of the oversight committee, such legislators shall
55 receive per diem and expenses which shall be paid from the
56 contingent expense funds of their respective houses in the same
57 amounts as provided for committee meetings when the Legislature is
58 not in session; however, no per diem and expenses for attending
59 meetings of the committee will be paid while the Legislature is in
60 session. No per diem and expenses will be paid except for
61 attending meetings of the oversight committee without prior
62 approval of the proper committee in their respective houses.

63 (4) The Department of Human Services shall provide the
64 services authorized by law to every individual determined to be
65 eligible therefor, and in carrying out the purposes of the
66 department, the executive director is authorized:

67 (a) To formulate the policy of the department regarding
68 human services within the jurisdiction of the department;

69 (b) To adopt, modify, repeal and promulgate, after due
70 notice and hearing, and where not otherwise prohibited by federal
71 or state law, to make exceptions to and grant exemptions and
72 variances from, and to enforce rules and regulations implementing
73 or effectuating the powers and duties of the department under any
74 and all statutes within the department's jurisdiction, all of
75 which shall be binding upon the county departments of human
76 services;

77 (c) To apply for, receive and expend any federal or
78 state funds or contributions, gifts, devises, bequests or funds
79 from any other source;

80 (d) Except as limited by Section 43-1-3, to enter into
81 and execute contracts, grants and cooperative agreements with any
82 federal or state agency or subdivision thereof, or any public or
83 private institution located inside or outside the State of
84 Mississippi, or any person, corporation or association in
85 connection with carrying out the programs of the department; and

86 (e) To discharge such other duties, responsibilities
87 and powers as are necessary to implement the programs of the
88 department.

89 (5) The executive director shall establish the
90 organizational structure of the Mississippi Department of Human
91 Services which shall include the creation of any units necessary
92 to implement the duties assigned to the department and consistent
93 with specific requirements of law, including, but not limited to:

94 (a) Office of Family and Children's Services;

95 (b) Office of Youth Services;

96 (c) Office of Economic Assistance.

97 * * *

98 (6) The Executive Director of Human Services shall appoint
99 heads of offices, bureaus and divisions, as defined in Section
100 7-17-11, who shall serve at the pleasure of the executive
101 director. The salary and compensation of such office, bureau and
102 division heads shall be subject to the rules and regulations
103 adopted and promulgated by the State Personnel Board as created
104 under Section 25-9-101 et seq. The executive director shall have
105 the authority to organize offices as deemed appropriate to carry
106 out the responsibilities of the department. The organization
107 charts of the department shall be presented annually with the
108 budget request of the Governor for review by the Legislature.

109 (7) This section shall stand repealed on July 1, 2009.

110 **SECTION 2.** Section 43-19-31, Mississippi Code of 1972, is
111 amended as follows:

112 43-19-31. (1) The Office of the Attorney General is
113 designated as the state's Title IV-D agency. On July 1, 2006, the
114 Child Support Unit of the Department of Human Services shall be
115 transferred to the Office of the Attorney General. Wherever the
116 term "Child Support Unit" appears in any law, the same shall mean
117 the Child Support Unit of the Office of Attorney General. The
118 Attorney General may assign to the appropriate offices such powers
119 and duties deemed appropriate to carry out the lawful functions of
120 the Child Support Unit. The person appointed by the Attorney
121 General as the person responsible for managing the Title IV-D
122 agency's child support enforcement duties shall report directly to
123 the Attorney General. Appropriations made to the Title IV-D
124 agency for child support enforcement may be expended only for the
125 purposes for which the money was appropriated.

126 (2) An attorney employed to provide Title IV-D services
127 represents the interest of the state and not the interest of any
128 other party. The provision of services by an attorney under this

129 chapter does not create an attorney-client relationship between
130 the attorney and any other party. The agency shall, at the time
131 an application for child support services is made, inform the
132 applicant that neither the Title IV-D agency nor any attorney who
133 provides services under this chapter is the applicant's attorney
134 and that the attorney providing services under this chapter does
135 not provide legal representation to the applicant. An attorney
136 employed by the Title IV-D agency or as otherwise provided by this
137 chapter may not be appointed or act as a guardian ad litem or
138 attorney ad litem for a child or another party. A court shall not
139 disqualify the Title IV-D agency in a legal action filed under
140 this chapter or Part D of Title IV of the federal Social Security
141 Act on the basis that the agency has previously provided services
142 to a party whose interests may now be adverse to the relief
143 requested.

144 (3) The Office of Attorney General is hereby authorized and
145 empowered to establish a single and separate Child Support Unit
146 for the following purposes:

147 (a) To develop and implement a nonsupport and paternity
148 program and institute proceedings in the name of the Child Support
149 Unit of the Office of Attorney General or in the name of the
150 recipient in any court of competent jurisdiction in any county
151 where the mother of the child resides or is found, in the county
152 where the father resides or is found, or in the county where the
153 child resides or is found;

154 (b) To secure and collect support by any method
155 authorized under state law and establish paternity for any child
156 or children receiving aid from the Department of Human Services
157 any form of public assistance, including, but not limited to,
158 medical assistance, foster care, food stamps, TANF, or any other
159 program under the federal Social Security Act, from a parent or
160 any other person legally liable for such support who has either
161 failed or refused to provide support, deserted, neglected or

162 abandoned the child or children, including cooperating with other
163 states in establishing paternity, locating absent parents and
164 securing compliance with court orders for support of Temporary
165 Assistance for Needy Families (TANF) children; the Child Support
166 Unit may petition the court for the inclusion of health insurance
167 as part of any child support order on behalf of any child
168 receiving aid from the Department of Human Services unless good
169 cause for noncooperation, as defined by the Social Security Act or
170 the Child Support Unit, is established. Unless notified to the
171 contrary, whenever a child or children for whom child support
172 services have been provided ceases to receive public assistance,
173 the Child Support Unit will continue to provide services and
174 establish paternity, secure and collect such support payments from
175 a parent or any other person legally liable for such support in
176 accordance with the standards prescribed pursuant to the federal
177 Social Security Act;

178 (c) To accept applications for child support
179 enforcement services to establish paternity, secure and collect
180 support from any proper party or person as defined by Title IV-D
181 of the federal Social Security Act notwithstanding the fact that
182 the child or children do not currently receive or have never
183 received public assistance. The Child Support Unit shall have the
184 authority to secure and collect support by any method authorized
185 under state law and establish paternity for any child or children
186 on behalf of a recipient of child support services, including
187 individuals who do not currently receive or have never received
188 public assistance from a parent or any other person legally liable
189 for such support who has either failed or refused to provide
190 support, deserted, neglected or abandoned the child or children,
191 including cooperating with other states in establishing paternity,
192 locating absent parents and securing compliance with court orders
193 for support; the Child Support Unit may petition the court for the
194 inclusion of health insurance as part of any child support order

195 on behalf of such recipients of child support services. The
196 proceeds of any collections resulting from such application shall
197 be distributed in accordance with the standards prescribed in the
198 federal Social Security Act;

199 (d) The Child Support Unit shall seek to recover from
200 the individual who owes a support obligation to any individual who
201 is a recipient of Title IV-D services as set forth in paragraph
202 (b) or (c) on whose behalf the Child Support Unit is providing
203 services, upon judicial proceedings conducted thereon after
204 advance notice to such obligor, reasonable attorney's fees and
205 court costs, in excess of any administrative fees collected and in
206 excess of amounts of current support owed by the obligor, which
207 the Child Support Unit incurs in recovering and collecting the
208 support obligation, such costs and fees as the Child Support Unit
209 recovers to be deposited in the Special Fund of the Child Support
210 Unit of the Office of Attorney General which is hereby established
211 for the pursuit and collection of child support;

212 (e) To initiate contempt of court proceedings or any
213 other remedial proceedings necessary to enforce (i) any order or
214 decree of court relating to child support, and (ii) any order or
215 decree of court relating to the maintenance and/or alimony of a
216 parent where support collection services on his or her child's
217 behalf are being provided by the Child Support Unit;

218 (f) To secure and collect by any method authorized
219 under state law any maintenance and/or alimony on behalf of a
220 parent whose child or children's support is being collected by the
221 Child Support Unit. The Child Support Unit shall collect only
222 such maintenance and/or alimony as is ordered or decreed by the
223 court, and only in the event that the minor child and parent to
224 whom such maintenance and/or alimony has been ordered are living
225 in the same household;

226 (g) To obtain restitution of monies expended for public
227 assistance from a parent or any other person legally liable for

228 the support of any child or children receiving aid from the Child
229 Support Unit; said action for restitution shall arise from the
230 payment of public assistance for the dependent child or children
231 and shall be for the amount of the public assistance paid. Said
232 action for restitution shall not arise against the parent or other
233 person legally responsible who receives public assistance for the
234 benefit of any dependent child or children. When a court order of
235 support has been issued, the amount recoverable shall be limited
236 to the amount of the court order;

237 (h) Setting off against a debtor's income tax refund or
238 rebate any debt which is in the form of a liquidated sum due and
239 owing for the care, support or maintenance of a child;

240 (i) To have full responsibility in the aforementioned
241 cases for initiating actions under the Uniform Interstate Family
242 Support Act and for responding to the actions of other
243 jurisdictions under said law when Mississippi is the responding
244 state; however, this shall not impair private litigants' rights to
245 proceed under any applicable interstate enforcement mechanisms;

246 (j) To enter into contracts for the purpose of
247 performing any test which the Child Support Unit may, from time to
248 time, require;

249 (k) To maintain a Central Receipting and Disbursement
250 Unit to which all payments required by withholding orders and
251 orders for support in all actions to which the Child Support Unit
252 is a party shall be forwarded, and from which child support
253 payments ordered by the court in actions to which the Child
254 Support Unit is a party shall be disbursed to the custodial parent
255 or other such party as may be designated by the court order. The
256 Central Receipting and Disbursement Unit shall be operated by the
257 Child Support Unit or any financial institution having operations
258 and qualified to do business in Mississippi, whose deposits are
259 insured by the Federal Deposit Insurance Corporation. The Child

260 Support Unit shall conduct cost-benefit analyses to determine and
261 utilize the more cost efficient manner of operating the unit;

262 (1) To maintain a Child Support Unit of the Office of
263 Attorney General Case Registry containing records with respect to:

264 (i) Each case in which services are being provided
265 by the Child Support Unit under this section; and

266 (ii) Each support order established or modified in
267 Mississippi on or after October 1, 1998; and

268 (iii) The Administrative Office of Courts, as
269 established by Section 9-21-1, Mississippi Code of 1972, in
270 consultation with the Child Support Unit, shall devise, promulgate
271 and require the use of a Uniform Child Support Order Tracking
272 System.

273 1. Information collected from case filing
274 forms shall be furnished to the Child Support Unit of the Office
275 of Attorney General, in order that compliance with court-ordered
276 obligations of support may be tracked with specificity throughout
277 the duration of said obligations and any subsequent proceedings.

278 2. Such tracking system shall include: a.
279 the names, residential and mailing addresses, telephone numbers,
280 social security numbers, driver's license numbers and dates of
281 birth of each child and parent named in or subject to the court
282 order; b. the court cause number of the action; c. name, address
283 and telephone number of employer; d. any restraining or protective
284 order indicating domestic violence; and e. any other information
285 which may be used for the purpose of identifying any person named
286 in or subject to the order or for the purposes of establishing,
287 enforcing or modifying a child support order; and

288 (m) To take administrative actions relating to genetic
289 testing, determine paternity, establish child support orders,
290 modification of child support orders, income withholding, liens
291 and subpoenas without the necessity of obtaining an order from any
292 judicial or other administrative tribunal with respect to cases

293 initiated or enforced by the Child Support Unit pursuant to Title
294 IV-D of the Social Security Act;

295 (n) To have the authority to use high-volume automated
296 administrative enforcement in interstate cases to the same extent
297 as used for intrastate cases, in response to a request made by
298 another state to enforce support orders;

299 (o) To provide any child support enforcement or other
300 service as may be required by the United States of America,
301 Department of Health and Human Services, Family Support
302 Administration, Office of Child Support Enforcement or their
303 successor pursuant to federal law or regulation.

304 **SECTION 3.** Section 43-19-34, Mississippi Code of 1972, is
305 amended as follows:

306 43-19-34. (1) In lieu of legal proceedings instituted to
307 obtain a modification for an order for support, a written
308 stipulated agreement for modification executed by the responsible
309 parent when acknowledged before a clerk of the court having
310 jurisdiction over such matters or a notary public and filed with
311 and approved by the judge of said court shall have the same force
312 and effect, retroactively and prospectively, in accordance with
313 the terms of said agreement as an order for modification of
314 support entered by the court, and shall be enforceable and subject
315 to subsequent modification in the same manner as is provided by
316 law for orders of the court in such cases.

317 (2) With respect to a child support order in cases initiated
318 or enforced by the Child Support Unit pursuant to Title IV-D of
319 the Social Security Act, wherein the Child Support Unit has
320 determined that a modification is appropriate, the Child Support
321 Unit shall send a motion and notice of intent to modify the order,
322 together with the proposed modification of the order under this
323 section to the last known mailing address of the defendant. Such
324 notice shall specify the date and time certain of the hearing and
325 shall be sent by certified mail, restricted delivery, return

326 receipt requested; notice shall be deemed complete as of the date
327 of delivery as evidenced by the return receipt. The required
328 notice may also be delivered by personal service in accordance
329 with Rule 4 of the Mississippi Rules of Civil Procedure insofar as
330 it may be applied to service of an administrative order or notice.
331 The defendant may accept the proposed modification by signing and
332 returning it to the Child Support Unit prior to the date of
333 hearing for presentation to the court for approval. In the event
334 that the defendant does not sign and return the proposed
335 modification, the court shall on the date and time previously set
336 for hearing review the proposal and make a determination as to
337 whether it should be approved in whole or in part.

338 (3) Every three (3) years, upon the request of either
339 parent, or if there is an assignment under Section 43-19-35, upon
340 the request of the Child Support Unit or of either parent, the
341 Child Support Unit shall review and, if appropriate, seek to
342 adjust a support order being enforced under Section 43-19-31 in
343 accordance with the guidelines established pursuant to Section
344 43-19-101, if the amount of the child support award under the
345 order differs from the amount that would be awarded in accordance
346 with the guidelines, taking into account the best interests of the
347 child involved. No proof of a material change in circumstances is
348 necessary in the three-year review for adjustment pursuant to this
349 subsection (3). Proof of a material change in circumstances is
350 necessary for modification outside the three-year cycle.

351 (4) Any order for the support of minor children, whether
352 entered through the judicial system or through an expedited
353 process, shall not be subject to a downward retroactive
354 modification. An upward retroactive modification may be ordered
355 back to the date of the event justifying the upward modification.

356 **SECTION 4.** Section 43-19-35, Mississippi Code of 1972, is
357 amended as follows:

358 43-19-35. (1) By currently or previously accepting public
359 assistance or making application for child support services for
360 and on behalf of a child or children, the recipient shall be
361 deemed to have made an assignment to the Child Support Unit of the
362 Office of Attorney General of any and all rights and interests in
363 any cause of action, past, present or future, that said recipient
364 or the children may have against any parent failing to provide for
365 the support and maintenance of said minor child or children; said
366 Child Support Unit shall be subrogated to any and all rights,
367 title and interest the recipient or the children may have against
368 any and all property belonging to the absent or nonsupporting
369 parent in the enforcement of any claim for child or spousal
370 support, whether liquidated through court order or not. The
371 recipient of Title IV-D services shall also be deemed, without the
372 necessity of signing any document, to have appointed the Child
373 Support Unit of the Office of Attorney General to act in his or
374 her, as well as the children's, name, place, and stead to perform
375 the specific act of instituting suit to establish paternity or
376 secure support, collecting any and all amounts due and owing for
377 child or spousal support or any other service as required or
378 permitted under Title IV-D of the federal Social Security Act, and
379 endorsing any and all drafts, checks, money orders or other
380 negotiable instruments representing child or spousal support
381 payments which are received on behalf of the recipient or the
382 children, and retaining any portion thereof permitted under
383 federal and state statutes as reimbursement for public assistance
384 monies previously paid to the recipient or children.

385 (2) Court orders of support for any child or children
386 receiving services through Title IV-D of the federal Social
387 Security Act shall be amended, by operation of law, and without
388 the necessity of a motion by the Child Support Unit and a hearing
389 thereon to provide that the payment of support shall be directed
390 by the absent parent to the Child Support Unit of the Office of

391 Attorney General Central Receipting and Disbursement Unit as
392 provided in Section 43-19-37 and not to the recipient. The absent
393 parent shall be notified of such amendment prior to it taking
394 effect.

395 (3) Any attorney authorized by the state to initiate any
396 action pursuant to Title IV-D of the federal Social Security Act,
397 including, but not limited to, any action initiated pursuant to
398 Sections 43-19-31 et seq. and 93-25-1 et seq. shall be deemed to
399 represent the interest of the Child Support Unit exclusively; no
400 attorney-client relationship shall exist between said attorney and
401 any recipient of services pursuant to Title IV-D of the federal
402 Social Security Act for and on behalf of a child or children,
403 regardless of the name in which the legal proceedings are
404 initiated. Said attorney representing the state in a Title IV-D
405 case is only authorized to appear and prosecute and/or defend
406 issues of support and cannot in a Title IV-D case address or
407 provide representation to the Title IV-D recipient on any other
408 ancillary issues raised or presented in that action.

409 (4) Said assignment to the Child Support Unit shall be free
410 of any legal or equitable defense to the payment of child support
411 that may accrue to any person legally liable for the support of
412 any child or children receiving aid from the State Department of
413 Human Services, as a result of the conduct of the person who is
414 accepting public assistance for and on behalf of said child or
415 children.

416 **SECTION 5.** Section 43-19-37, Mississippi Code of 1972, is
417 amended as follows:

418 43-19-37. (1) Court orders of support in all cases brought
419 under the provisions of Sections 43-19-31 through 43-19-53 shall
420 specify that the payment of court costs shall be directed by the
421 absent parent to the Child Support Unit Central Receipting and
422 Disbursement Unit for further disbursement in the manner as
423 prescribed by Title IV-D of the federal Social Security Act. The

424 court shall assess attorney's fees to recover the costs associated
425 with preparing and prosecuting the case, which shall be paid
426 directly to the Child Support Unit of the Office of Attorney
427 General solely for the support of the legal division of the Child
428 Support Unit, in a manner separate and distinct from the payment
429 of child support. The court may allow the defendant to pay the
430 attorney's fee over a period not to exceed four (4) months. The
431 state portion of attorney's fees paid into the Child Support Unit
432 shall be used to match federal funds for the support of the legal
433 division of the Child Support Unit, in conjunction with the Office
434 of Attorney General. Any payments made by the absent parent
435 directly to the recipient or applicant in violation of the court
436 order shall not be deemed to be a support payment or an attorney's
437 fee and shall not be credited to the court-ordered obligation of
438 said absent parent or to the court-ordered obligation for the
439 payment of the attorney's fee. Failure of the absent parent to
440 comply with an order of support or for payment of an attorney's
441 fee for a period of thirty (30) days shall be directed to the
442 court having jurisdiction of the matter for contempt proceedings
443 or execution issued in the manner and form prescribed by statute.
444 Should civil proceedings become ineffective in producing support
445 or attorney's fees in any case involving a legitimate child or a
446 child wherein paternity has been established by law or
447 acknowledged in writing, the case shall promptly be referred to
448 the district attorney for prosecution as a violation of Section
449 97-5-3.

450 (2) Each application, petition, order or filing made under
451 this section shall include the social security number(s) of the
452 applicant or father, mother and child(ren), as applicable, in
453 accordance with Section 93-11-64, Mississippi Code of 1972.

454 **SECTION 6.** Section 43-19-44, Mississippi Code of 1972, is
455 amended as follows:

456 43-19-44. For purposes of this section, an "authorized
457 person" shall mean:

458 (a) Any agent or attorney of any state having in effect
459 a plan approved under federal law, who has the duty or authority
460 under such plan to seek to recover any amounts owed as child and
461 spousal support (including, when authorized under the state plan,
462 any official of a political subdivision);

463 (b) The court which has authority to issue an order or
464 to serve as the initiating court in an action to seek an order
465 against a noncustodial parent of the support and maintenance of a
466 child, or any agent of such court;

467 (c) The resident parent, legal guardian, attorney or
468 agent of a child (other than a child receiving federal assistance
469 as determined by federal regulation) without regard to the
470 existence of a court order against a noncustodial parent who has a
471 duty to support and maintain any such child;

472 (d) A state agency that is administering a program
473 operated under a state plan approved under federal law;

474 (e) Any agent or attorney of any state having an
475 agreement under this section, who has the duty or authority under
476 the law of such state to enforce a child custody or visitation
477 determination;

478 (f) Any court having jurisdiction to make or enforce
479 such a child custody or visitation determination, or any agent of
480 such court; and

481 (g) Any agent or attorney of the United States, or of a
482 state having an agreement under this section, who has the duty or
483 authority to investigate, enforce or bring a prosecution with
484 respect to the unlawful taking or restraint of a child.

485 The Child Support Unit shall safeguard personal data if the
486 Child Support Unit is provided with reasonable evidence of a risk
487 of harm. A state agency, court, department of another state,
488 obligor, obligee and such other persons or entities as the Child

489 Support Unit may specify may provide the Child Support Unit with
490 reasonable evidence of a risk of harm in such manner as the Child
491 Support Unit may require. The Child Support Unit shall not be
492 required to safeguard personal data in intrastate cases for longer
493 than one (1) year unless the Child Support Unit is provided with
494 reasonable evidence of a continued risk of harm in such manner as
495 the Child Support Unit may require. The Child Support Unit shall
496 notify individuals whose personal data is safeguarded under this
497 section that in order for the safeguards to remain in effect, such
498 individuals must provide the Child Support Unit annually with
499 reasonable evidence of a continued risk of harm. For the purposes
500 of this section, "reasonable evidence of a risk of harm" shall
501 mean reasonable evidence that the release of information may
502 result in physical harm to the parent or child, that the release
503 of information may result in emotional harm to the parent or child
504 which would significantly reduce the parent's capacity to care for
505 the child, or would significantly reduce the parent or child's
506 ability to function adequately, or that a protective order or
507 restraining order has been issued on behalf of the parent or
508 child.

509 If the Child Support Unit is provided with reasonable
510 evidence of a risk of harm, the Child Support Unit, its employees
511 and its contractors shall not disclose any personal data that
512 could otherwise be disclosed about the location of a parent or
513 child, including residential address, telephone number and name,
514 address and telephone number of employer, and shall not disclose
515 the social security number of a parent or child; provided,
516 however, that such personal data may be shared by and between
517 employees of the Child Support Unit and its contractors; provided
518 further, that the Child Support Unit may disclose such personal
519 data to the Federal Parent Locator Service, to the court, or agent
520 of a court that is authorized to receive information from the

521 Federal Parent Locator Service established pursuant to Title IV-D
522 of the Social Security Act.

523 Provided further, that the Child Support Unit may disclose
524 the social security number of a child receiving IV-D services for
525 the purposes directly connected to obtaining health care coverage
526 for such child to an employer or provider of health care coverage.

527 If the Child Support Unit is provided with reasonable
528 evidence of a risk of harm pursuant to this section, the Child
529 Support Unit shall notify the Federal Parent Locator Service
530 established pursuant to Title IV-D of the Social Security Act that
531 a risk of harm exists. Upon order of the court in an intrastate
532 matter the Child Support Unit shall release personal data, which
533 may include location information and social security numbers, to
534 such court or agent, as required by said Title IV-D of the Social
535 Security Act; provided, however, that if the Child Support Unit
536 has been provided with reasonable evidence of a risk of harm, the
537 Child Support Unit shall notify the court or agent that the Child
538 Support Unit has received such information; before making any
539 disclosure of such personal data, the court is required to
540 determine whether such disclosure to any other person could be
541 harmful to the parent or child. A person or agency seeking
542 disclosure of personal data which the Child Support Unit is
543 prohibited from disclosing because of a risk of harm, but which
544 could otherwise be disclosed, may file a petition with the
545 chancery court to request disclosure of such personal data.

546 Upon an order by the court in interstate cases to override
547 nondisclosure procedures in cases dealing with domestic violence,
548 the court shall order the Child Support Unit to release this
549 information within thirty (30) days of the order. Whereupon, the
550 Child Support Unit shall transmit said court order to the Federal
551 Office of Child Support Enforcement (OCSE), Federal Parent Locator
552 Service (FPLS), whereby OCSE will notify the Child Support Unit of
553 its decision to remove the nondisclosure code. Upon notification

554 from OCSE, the Child Support Unit shall release said information
555 unto the court.

556 Any unauthorized disclosure or unauthorized willful
557 inspection made in a good faith effort to comply with this section
558 shall not be considered a violation of this section.

559 A person or agency, including the Child Support Unit, seeking
560 personal data which the Child Support Unit is prohibited from
561 disclosing because of a risk of harm, but which could otherwise be
562 disclosed or which the Federal Parent Locator Service established
563 pursuant to Title IV-D of the Social Security Act is prohibited
564 from disclosing because the Secretary of the Federal Department of
565 Health and Human Services has been notified that there is a
566 reasonable evidence of domestic violence or child abuse, may file
567 a petition with the court where the person resides to request
568 disclosure of such personal data. The petition shall specify the
569 purpose for which such personal data is required. When a petition
570 is filed, or when the court receives notice from the Child Support
571 Unit that the Child Support Unit has been notified of a risk of
572 harm, the court shall determine whether disclosure of personal
573 data could be harmful to the parent or child before releasing such
574 data to any other person or agency. In making such determination,
575 the court shall notify the parent that the court has received a
576 request to release personal data and shall provide a specific date
577 by which the parent must object to release of the information and
578 provide the basis for objection. The parent may provide such
579 information in writing and shall not be required to appear in
580 person to contest the release of information. The court shall
581 also notify the Child Support Unit of any petition filed pursuant
582 to this section and the Child Support Unit shall release to the
583 court any information which it has been provided regarding the
584 risk of harm; however, the Child Support Unit shall not be made a
585 party to the action. Further, the attorney for the Child Support
586 Unit, in any proceeding herein, shall not be deemed to be

587 appearing in a representative capacity for any party. The court
588 may also request information directly from the Federal Parent
589 Locator Service from the Child Support Unit of another state, and
590 from any other source.

591 In determining whether disclosure of personal data could be
592 harmful to the parent or child, the court shall consider any
593 relevant information provided by the parent or child, any
594 information provided by the Child Support Unit or by the Child
595 Support Unit of another state, and any evidence provided by the
596 person seeking the personal data. Documentary evidence
597 transmitted to the court by facsimile, telecopier or other means
598 that do not provide an original writing may not be excluded from
599 evidence on an objection based on the means of transmission. The
600 court may permit a party or witness to be deposed or to testify by
601 telephone, audiovisual means, or other electronic means.

602 The court may enter an order (1) impounding the personal data
603 and prohibiting any disclosure by the court or its agents, (2)
604 permitting disclosure by the court or its agents to a specific
605 person or persons, or (3) removing any restrictions on disclosure
606 by the court and its agents. An order permitting disclosure of
607 personal data may specify the purposes for which the data may be
608 used and may prohibit a person to whom the data is disclosed from
609 making further disclosures to any other person. The court shall
610 notify the Child Support Unit of any order entered pursuant to
611 this section. Any person or agency who violates an order issued
612 pursuant to this section may be held in contempt of court and
613 subject to the penalties provided herein.

614 The court may disclose location information about a parent
615 for the limited purpose of notifying the parent of a proceeding
616 under this section or of any other proceeding in court, provided
617 that such information shall not be disclosed to another party
618 unless the court issues an order pursuant to this section
619 permitting such disclosure.

620 **SECTION 7.** Section 43-19-46, Mississippi Code of 1972, is
621 amended as follows:

622 43-19-46. (1) Each employer, as defined in Section
623 93-11-101, doing business in Mississippi shall report to the
624 Directory of New Hires within the Child Support Unit of the Office
625 of Attorney General:

626 (a) The hiring of any person who resides or works in
627 this state to whom the employer anticipates paying wages; and

628 (b) The hiring or return to work of any employee who
629 was laid off, furloughed, separated, granted leave without pay or
630 was terminated from employment.

631 (2) Employers shall report, by mailing or by other means
632 authorized by the Child Support Unit, a copy of the employee's W-4
633 form or its equivalent which will result in timely reporting.
634 Each employer shall submit reports within fifteen (15) days of the
635 hiring, rehiring or return to work of the employee. The report
636 shall contain:

637 (a) The employee's name, address, social security
638 number and the date of birth;

639 (b) The employer's name, address, and federal and state
640 withholding tax identification numbers; and

641 (c) The date upon which the employee began or resumed
642 employment, or is scheduled to begin or otherwise resume
643 employment.

644 (3) The Child Support Unit shall retain the information,
645 which shall be forwarded to the federal registry of new hires.

646 (4) The Child Support Unit may operate the program, may
647 enter into a mutual agreement with the Mississippi Department of
648 Employment Security or the State Tax Commission, or both, for the
649 operation of the Directory of New Hires Program, or the Child
650 Support Unit may contract for such service, in which case the
651 Child Support Unit shall maintain administrative control of the
652 program.

653 (5) In cases in which an employer fails to report
654 information, as required by this section, an administratively
655 levied civil penalty in an amount not to exceed Five Hundred
656 Dollars (\$500.00) shall apply if the failure is the result of a
657 conspiracy between the employer and employee to not supply the
658 required report or to supply a false or incomplete report. The
659 penalty shall otherwise not exceed Twenty-five Dollars (\$25.00).
660 Appeal shall be as provided in Section 43-19-58.

661 **SECTION 8.** Section 43-19-47, Mississippi Code of 1972, is
662 amended as follows:

663 43-19-47. (1) The Child Support Unit of the Office of
664 Attorney General * * * may appoint at least one (1) full-time
665 staff attorney in or for each chancery court district for the
666 purpose of initiating proceedings under the provisions of Sections
667 43-19-31 through 43-19-53 in securing child support and
668 establishing paternity. The qualifications and annual salary of
669 each of the attorneys appointed by the Child Support Unit, * * *
670 under the provisions of Sections 43-19-31 through 43-19-53 shall
671 be fixed at such sums as may be deemed proper in accordance with
672 the salaries of other full-time employed state attorneys with the
673 Attorney General's Office. Such salaries, inclusive of all
674 reimbursable travel and other expenses, inclusive of financial
675 arrangements perfected with the appropriate courts, the law
676 enforcement officials and the district attorneys, shall be paid
677 monthly from the funds appropriated to the Child Support Unit of
678 the Office of Attorney General and from the special fund for the
679 Division of Child Support in which the interest from its accounts
680 and all attorney's fees and other fees is placed. The Mississippi
681 Personnel Board shall survey the salaries of other Mississippi
682 attorneys with the Attorney General's Office each year and shall
683 raise the start step of the staff and senior attorneys accordingly
684 and the minimum shall never go below Forty Thousand Dollars

685 (\$40,000.00) for staff attorneys or Fifty Thousand Dollars
686 (\$50,000.00) for senior attorneys.

687 (2) To assist in the implementation of the provisions of
688 Sections 43-19-31 through 43-19-53, the Attorney General is
689 empowered to enter into cooperative agreements with district
690 attorneys, county attorneys and attorneys employed by the county
691 boards of supervisors * * *. Said cooperative agreements shall be
692 made in compliance with the regulations established by the
693 Secretary of the Department of Health and Human Services, and may
694 be funded either by funds appropriated to the Child Support Unit
695 of the Office of Attorney General or funds appropriated by any
696 county board of supervisors in this state for their respective
697 county. Attorneys may be hired contractually to be paid in
698 amounts commensurate with the Child Support Unit's staff
699 attorneys.

700 **SECTION 9.** Section 43-19-48, Mississippi Code of 1972, is
701 amended as follows:

702 43-19-48. (1) The Child Support Unit and financial
703 institutions doing business in the state are required to enter
704 into agreements:

705 (a) To develop and operate a data match system, using
706 automated data exchanges, in which each such financial institution
707 is required to provide for each calendar quarter the name, record
708 address, social security number or other taxpayer identification
709 number, and other identifying information for each noncustodial
710 parent who maintains an account at such institution and who owes
711 past-due support, as identified by the Child Support Unit by name
712 and social security number or other taxpayer identification
713 number;

714 (b) To encumber or surrender, as the case may be,
715 assets held by such institution on behalf of any noncustodial
716 parent who is subject to a child support lien; and

717 (c) To provide for payment of reasonable fees to
718 financial institutions for conducting data matches, and for
719 responding to other requests made pursuant to this section, with
720 such fees not to exceed the actual costs incurred by such
721 financial institutions.

722 (2) When the operation of such data match system results in
723 the location of an account of a noncustodial parent who owes
724 past-due support, or when such account is located through any
725 means, the Child Support Unit may request and shall receive
726 additional financial or other information including account
727 numbers, names and social security numbers on record for accounts,
728 and account balances, from any financial institution needed to
729 establish, modify or enforce a support order.

730 (3) The Child Support Unit shall have the authority to
731 encumber and seize assets held by an obligor in a financial
732 institution doing business in Mississippi. Such assets shall be
733 encumbered for either:

734 (a) A forty-five-day period; or

735 (b) Until such time as the issue of overdue support is
736 resolved, provided the obligor has filed a petition for hearing
737 with a court of appropriate jurisdiction and the financial
738 institution receives written notice thereof from the Child Support
739 Unit before the end of the said forty-five-day period.

740 (4) Notice of such encumbrance initiated by the Child
741 Support Unit shall be provided to the financial institution and to
742 the obligor:

743 (a) The Child Support Unit shall send, by certified
744 mail, notice to the financial institution with which the account
745 is placed, directing that the financial institution shall:

746 (i) Immediately encumber funds in any account(s)
747 in which the obligor has an interest, and to the extent of the
748 debt indicated in the notice from the Child Support Unit;

749 (ii) Forward the encumbered funds to the Child
750 Support Unit after either the forty-five-day period stated in
751 subsection 3(a) of this section, or a determination favorable to
752 the Child Support Unit by a court of appropriate jurisdiction; or

753 (iii) In the event the obligor prevails before the
754 court, immediately release said funds to the obligor.

755 (b) Notice shall be delivered to the obligor at the
756 current mailing address as recorded by the Child Support Unit.
757 Such notice shall be sent by regular mail at the commencement of
758 the action described herein.

759 (c) The financial institution shall not disclose to an
760 account holder or the depositor that the name of such person has
761 been received from or furnished to the Child Support Unit. The
762 financial institution shall disclose to its account holders or its
763 depositors that under the data match system the Child Support Unit
764 has the authority to request certain identifying information on
765 the account holders' or the depositor's accounts.

766 (5) Challenges to encumbrance of an account:

767 (a) Challenges to such levy for child support arrearage
768 may be initiated only by the obligor or by an account holder of
769 interest.

770 (b) Challenges shall be made by the filing of a
771 petition for hearing by the obligor in a court of appropriate
772 jurisdiction under Rule 81(d)(2) of the Mississippi Rules of Civil
773 Procedure. Service upon the Child Support Unit shall be as
774 prescribed by Rule 4(d)(5) of the Mississippi Rules of Civil
775 Procedure.

776 (c) Grounds for the petition challenging the
777 encumbrance shall be limited to:

778 (i) Mistakes of identity; or

779 (ii) Mistakes in amount of overdue support.

780 (6) Liability of the financial institution and the Child
781 Support Unit:

782 (a) Neither the Child Support Unit nor the financial
783 institution shall be liable for any applicable early withdrawal
784 penalties on the obligor's account(s).

785 (b) A financial institution shall be absolutely immune
786 from any civil liability under any law or regulation to any person
787 for the disclosure of or failure to disclose any information
788 pursuant to this chapter or for the escrow, encumbrance, seizure
789 or surrender of any assets held by the financial institution in
790 response to any notice issued by the * * * Child Support Unit or
791 any contractors or agents thereof unless the disclosure or failure
792 to disclose was willful or intentional, or for any other action
793 taken in good faith to comply with the requirements of this
794 chapter.

795 (7) Any amount encumbered and forwarded by the financial
796 institution under this section shall not exceed the arrearage owed
797 by the obligor.

798 (8) The provisions herein and any other relevant sections
799 shall be employed equally by authorized contractors of the Child
800 Support Unit to collect delinquent support payments.

801 (9) A financial institution shall not be liable under
802 federal or state law to any person:

803 (a) For any disclosure of information to the Child
804 Support Unit;

805 (b) For encumbering or forwarding any assets held by
806 such financial institution in response to a notice of lien or
807 levy;

808 (c) For any other action taken in good faith to comply
809 with the requirements of subsection (1)(a) or (b) above.

810 (10) **Definitions.** For purposes of this section:

811 (a) The term "financial institution" has the meaning
812 given to such by Section 81-12-3, Mississippi Code of 1972, and
813 shall include, but not be limited to, credit unions, stock

814 brokerages, public or private entities administering retirement,
815 savings, annuities, life insurance and/or pension funds;

816 (b) The term "account" means a demand deposit account,
817 checking or negotiable withdrawal order account, savings account,
818 time deposit account or money-market mutual fund account.

819 (11) Failure to comply with the provisions of this section
820 or the willful rendering of false information shall subject the
821 financial institution to a fine of not less than One Thousand
822 Dollars (\$1,000.00).

823 **SECTION 10.** Section 43-19-49, Mississippi Code of 1972, is
824 amended as follows:

825 43-19-49. There is hereby authorized to be employed by the
826 Child Support Unit of the Office of Attorney General such other,
827 investigative, technical, secretarial and supportive staff as may
828 be necessary for the proper and necessary implementation of the
829 requirements of Public Law 93-647, 93rd Congress, and any
830 amendments adopted thereto applicable to said program as provided
831 under Sections 43-19-31 through 43-19-53; said positions shall be
832 subject to the merit system's rules and regulations and their
833 salaries shall be fixed in such amounts as the Attorney General
834 may deem proper.

835 **SECTION 11.** Section 43-19-53, Mississippi Code of 1972, is
836 amended as follows:

837 43-19-53. Not later than sixty (60) days after the first day
838 of January of each year, the Child Support Unit shall cause to be
839 published for the preceding calendar year a detailed report
840 showing the total number of cases in the aid to dependent children
841 program reported on the basis of fraud or suspected fraud, the
842 total number investigated, prosecuted and disposed of civilly
843 and/or criminally in each county of the state and the total number
844 of support and paternity cases reported, investigated, continued,
845 prosecuted civilly, and the total amount of support collected.

846 **SECTION 12.** Section 43-19-55, Mississippi Code of 1972, is
847 amended as follows:

848 43-19-55. The Child Support Unit of the Office of Attorney
849 General shall be authorized in maintaining separate accounts with
850 Mississippi banks to handle funds received as incentives from the
851 federal government earned as a result of collecting support and
852 also any funds maintained on deposit as a result of federal and
853 state income tax offsets and any other relevant account, and to
854 aggressively manage the float in these accounts so as to accrue
855 maximum interest advantage of the funds in the account, and to
856 retain all earned interest on these funds to be applied to defray
857 the expenses of the Child Support Unit.

858 **SECTION 13.** Section 43-19-57, Mississippi Code of 1972, is
859 amended as follows:

860 43-19-57. (1) Any administrative subpoena issued by the
861 Child Support Unit of the Office of Attorney General pursuant to
862 the provisions of Laws, 1997, Chapter 588, shall be directed to
863 the appropriate party or entity and signed by the Attorney
864 General, or his designee.

865 (2) A person wishing to appeal the issuance of an
866 administrative subpoena shall have recourse to the chancery courts
867 as for any subpoena.

868 **SECTION 14.** Section 43-19-58, Mississippi Code of 1972, is
869 amended as follows:

870 43-19-58. (1) Persons wishing to contest the imposition of
871 an administrative civil penalty under the provisions of Laws,
872 1997, Chapter 588, shall be entitled to a hearing before the Child
873 Support Unit by so requesting within twenty (20) days after
874 receiving notice of the imposition of the administratively imposed
875 civil penalty. The request shall identify the civil penalty
876 contested and legibly state the contestant's name, mailing address
877 and home and daytime phone numbers. The date, time and place for
878 the hearing shall be made as convenient as possible for the

879 contestant, who shall receive notice thereof not less than seven
880 (7) days before the hearing. A hearing on whether to impose a
881 civil penalty and to consider circumstances in mitigation shall be
882 held on the time and the place specified in the notice. The
883 contestant may appear in person, through his attorney or, prior to
884 the date set for the hearing, submit written testimony and other
885 evidence, subject to the penalty for false swearing, for entry in
886 the hearing record.

887 (2) After the hearing, the Child Support Unit shall issue
888 its order, which may be appealed to the chancery court of the
889 county in which the contestant resides in the same manner as is
890 provided by law for appeals originating from county courts.

891 (3) The Child Support Unit may file the order assessing the
892 penalty, or a certified copy of the order, with the clerk of any
893 chancery court in the state after expiration of the time in which
894 an appeal may be taken, or final determination of the matter on
895 appeal, whereupon the order assessing the penalty shall be
896 enrolled on the judgment roll and may be enforced in the same
897 manner as a judgment.

898 **SECTION 15.** Section 43-19-59, Mississippi Code of 1972, is
899 amended as follows:

900 43-19-59. (1) The Child Support Unit of the Office of
901 Attorney General, as the Title IV-D child support enforcement
902 agency of this state, shall use high-volume automated
903 administrative enforcement, to the same extent as used for
904 intrastate cases, in response to a request made by another state
905 to enforce support orders, and shall promptly report the results
906 of such enforcement procedure to the requesting state.

907 (2) In this section, "high-volume, automated administrative
908 enforcement" means the use of automatic data processing to search
909 various available state databases, including, but not limited to,
910 license records, employment service data, and state new hire

911 registries, to determine whether information is available
912 regarding a parent who owes a child support obligation.

913 (3) The Child Support Unit may, by electronic or other
914 means, transmit to another state or receive from another state a
915 request for assistance in enforcing support orders through
916 high-volume, automated administrative enforcement, which request:

917 (a) Shall include such information as will enable the
918 state to which the request is transmitted to compare the
919 information about the cases to the information in the data bases
920 of the state receiving the request; and

921 (b) Shall constitute a certification by the requesting
922 state:

923 (i) Of the amount of support under an order the
924 payment of which is in arrears; and

925 (ii) That the requesting state has complied with
926 all procedural due process requirements applicable to each case.

927 (c) If the Child Support Unit provides assistance to
928 another state with respect to a case, or if another state seeks
929 assistance from the Child Support Unit pursuant to this section,
930 neither state shall consider the case to be transferred to the
931 caseload of such other state.

932 **SECTION 16.** This act shall take effect and be in force from
933 and after July 1, 2006.