

By: Representative Holland

To: Public Health and Human  
Services

## HOUSE BILL NO. 839

1 AN ACT TO AMEND SECTION 43-19-34, MISSISSIPPI CODE OF 1972,  
2 TO PROVIDE THAT AN ARREARAGE IN CHILD SUPPORT PAYMENTS BY A  
3 NONCUSTODIAL PARENT SHALL NOT BE A BAR TO A REVIEW OF THE SUPPORT  
4 ORDER BY THE DEPARTMENT OF HUMAN SERVICES AND A DOWNWARD  
5 MODIFICATION OF SUPPORT PAYMENTS; AND FOR RELATED PURPOSES.

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

7 **SECTION 1.** Section 43-19-34, Mississippi Code of 1972, is  
8 amended as follows:

9 43-19-34. (1) In lieu of legal proceedings instituted to  
10 obtain a modification for an order for support, a written  
11 stipulated agreement for modification executed by the responsible  
12 parent when acknowledged before a clerk of the court having  
13 jurisdiction over those matters or a notary public and filed with  
14 and approved by the judge of that court shall have the same force  
15 and effect, retroactively and prospectively, in accordance with  
16 the terms of the agreement as an order for modification of support  
17 entered by the court, and shall be enforceable and subject to  
18 later modification in the same manner as is provided by law for  
19 orders of the court in those cases.

20 (2) With respect to a child support order in cases initiated  
21 or enforced by the Department of Human Services under Title IV-D  
22 of the Social Security Act, in which the department has determined  
23 that a modification is appropriate, the department shall send a  
24 motion and notice of intent to modify the order, together with the  
25 proposed modification of the order under this section to the last  
26 known mailing address of the defendant. The notice shall specify  
27 the date and time certain of the hearing and shall be sent by  
28 certified mail, restricted delivery, return receipt requested;

29 notice shall be deemed complete as of the date of delivery as  
30 evidenced by the return receipt. The required notice may also be  
31 delivered by personal service in accordance with Rule 4 of the  
32 Mississippi Rules of Civil Procedure insofar as it may be applied  
33 to service of an administrative order or notice. The defendant  
34 may accept the proposed modification by signing and returning it  
35 to the department before the date of hearing for presentation to  
36 the court for approval. If the defendant does not sign and return  
37 the proposed modification, the court shall on the date and time  
38 previously set for hearing review the proposal and make a  
39 determination as to whether it should be approved in whole or in  
40 part.

41 (3) Every three (3) years, upon the request of either  
42 parent, or if there is an assignment under Section 43-19-35, upon  
43 the request of the Department of Human Services or of either  
44 parent, the department shall review and, if appropriate, seek to  
45 adjust a support order being enforced under Section 43-19-31 in  
46 accordance with the guidelines established under Section  
47 43-19-101, if the amount of the child support award under the  
48 order differs from the amount that would be awarded in accordance  
49 with the guidelines, taking into account the best interests of the  
50 child involved. No proof of a material change in circumstances is  
51 necessary in the three-year review for adjustment under this  
52 subsection (3). A preexisting arrearage in support payments shall  
53 not serve as a bar to the department's review and adjustment  
54 procedure. Proof of a material change in circumstances is  
55 necessary for modification outside the three-year cycle.

56 (4) Any order for the support of minor children, whether  
57 entered through the judicial system or through an expedited  
58 process, shall not be subject to a downward retroactive  
59 modification. An upward retroactive modification may be ordered  
60 back to the date of the event justifying the upward modification.

61       (5) If a downward modification is determined to be warranted  
62 under the guidelines contained in subsection (3), the noncustodial  
63 parent's arrearage, if any, shall not be a basis for contesting  
64 the downward modification in any later legal proceedings.

65       **SECTION 2.** This act shall take effect and be in force from  
66 and after July 1, 2007.