

By: Representative Holland

To: Public Health and Human
ServicesHOUSE BILL NO. 839
(As Passed the House)

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 TO PROVIDE THAT EITHER PARENT
6 OF A CHILD FOR WHOM SUPPORT HAS BEEN ORDERED MAY SEEK AN
7 ADJUSTMENT TO THE SUPPORT ORDER AND TO PROVIDE THAT ANY PERSON
8 ORDERED TO MAKE CHILD SUPPORT PAYMENTS WHO IS SUBSEQUENTLY
9 DETERMINED NOT TO BE THE PARENT OF A CHILD FOR WHOM SUPPORT HAS
10 BEEN ORDERED IS NOT LIABLE FOR ANY ARREARAGE IN SUPPORT PAYMENTS;
11 AND FOR RELATED PURPOSES.

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

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

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

26 (2) With respect to a child support order in cases initiated
27 or enforced by the Department of Human Services under Title IV-D
28 of the Social Security Act, in which the department has determined
29 that a modification is appropriate, the department shall send a
30 motion and notice of intent to modify the order, together with the
31 proposed modification of the order under this section to the last

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

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

63 (4) Any order for the support of minor children, whether
64 entered through the judicial system or through an expedited

65 process, shall not be subject to a downward retroactive
66 modification. An upward retroactive modification may be ordered
67 back to the date of the event justifying the upward modification.

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

72 (6) If it is lawfully determined that a person previously
73 ordered to make support payments is, in fact, not the parent of
74 the minor child for whom support has been ordered, the person
75 shall not be liable for any arrearage in support payments.

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