

By: Representative Holland

To: Public Health and Human  
ServicesHOUSE BILL NO. 839  
(As Sent to Governor)

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; TO PROVIDE THAT EITHER PARENT OF  
6 A CHILD FOR WHOM SUPPORT HAS BEEN ORDERED MAY SEEK AN ADJUSTMENT  
7 TO THE SUPPORT ORDER; TO AMEND SECTION 93-11-71, MISSISSIPPI CODE  
8 OF 1972, TO PROVIDE THAT IF A COURT FINDS BY CLEAR AND CONVINCING  
9 EVIDENCE THAT A PERSON PREVIOUSLY ORDERED TO MAKE CHILD SUPPORT  
10 PAYMENTS IS NOT THE BIOLOGICAL FATHER OF THE CHILD OR CHILDREN FOR  
11 WHOM SUPPORT HAS BEEN ORDERED, THE COURT SHALL DISESTABLISH  
12 PATERNITY AND MAY FORGIVE ANY CHILD SUPPORT ARREARS OF THE PERSON  
13 FOR THE RELEVANT CHILD OR CHILDREN IF THE COURT FINDS THAT THE  
14 FORGIVENESS OF THE ARREARS IS EQUITABLE UNDER THE CIRCUMSTANCES;  
15 AND FOR RELATED PURPOSES.

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

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

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

30 (2) With respect to a child support order in cases initiated  
31 or enforced by the Department of Human Services under Title IV-D  
32 of the Social Security Act, in which the department has determined  
33 that a modification is appropriate, the department shall send a

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

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

67 (4) Any order for the support of minor children, whether  
68 entered through the judicial system or through an expedited  
69 process, shall not be subject to a downward retroactive  
70 modification. An upward retroactive modification may be ordered  
71 back to the date of the event justifying the upward modification.

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

76 (6) This section shall stand repealed on July 1, 2010.

77 **SECTION 2.** Section 93-11-71, Mississippi Code of 1972, is  
78 amended as follows:

79 93-11-71. (1) Whenever a court orders any person to make  
80 periodic payments of a sum certain for the maintenance or support  
81 of a child, and whenever such payments as have become due remain  
82 unpaid for a period of at least thirty (30) days, a judgment by  
83 operation of law shall arise against the obligor in an amount  
84 equal to all payments that are then due and owing.

85 (a) A judgment arising under this section shall have  
86 the same effect and be fully enforceable as any other judgment  
87 entered in this state. A judicial or administrative action to  
88 enforce the judgment may be begun at any time; and

89 (b) Such judgments arising in other states by operation  
90 of law shall be given full faith and credit in this state.

91 (2) Any judgment arising under the provisions of this  
92 section shall operate as a lien upon all the property of the  
93 judgment debtor, both real and personal, which lien shall be  
94 perfected as to third parties without actual notice thereof only  
95 upon enrollment on the judgment roll. The department or attorney  
96 representing the party to whom support is owed shall furnish an  
97 abstract of the judgment for periodic payments for the maintenance  
98 and support of a child, along with sworn documentation of the  
99 delinquent child support, to the circuit clerk of the county where

100 the judgment is rendered, and it shall be the duty of the circuit  
101 clerk to enroll the judgment on the judgment roll. Liens arising  
102 under the provisions of this section may be executed upon and  
103 enforced in the same manner and to the same extent as any other  
104 judgment.

105 (3) Notwithstanding the provisions in subsection (2) of this  
106 section, any judgment arising under the provisions of this section  
107 shall subject the following assets to interception or seizure  
108 without regard to the entry of the judgment on the judgment roll  
109 of the situs district or jurisdiction:

110 (a) Periodic or lump-sum payments from a federal, state  
111 or local agency, including unemployment compensation, workers'  
112 compensation and other benefits;

113 (b) Winnings from lotteries and gaming winnings that  
114 are received in periodic payments made over a period in excess of  
115 thirty (30) days;

116 (c) Assets held in financial institutions;

117 (d) Settlements and awards resulting from civil  
118 actions; and

119 (e) Public and private retirement funds, only to the  
120 extent that the obligor is qualified to receive and receives a  
121 lump sum or periodic distribution from the funds.

122 (4) Notwithstanding the provisions of subsections (1) and  
123 (2) of this section, upon a motion filed by the obligor and a  
124 finding of clear and convincing evidence including negative DNA  
125 testing that the obligor is not the biological father of the child  
126 or children for whom support has been ordered, the court shall  
127 disestablish paternity and may forgive any child support arrears  
128 of the obligor for the child or children determined by the court  
129 not to be the biological child or children of the obligor, if the  
130 court makes a written finding that, based on the totality of the  
131 circumstances, the forgiveness of the arrears is equitable under  
132 the circumstances.

133           (5) In any case in which a child receives assistance from  
134 block grants for Temporary Assistance for Needy Families (TANF),  
135 and the obligor owes past-due child support, the obligor, if not  
136 incapacitated, may be required by the court to participate in any  
137 work programs offered by any state agency.

138           (6) This section shall stand repealed on July 1, 2010.

139           **SECTION 3.** This act shall take effect and be in force from  
140 and after July 1, 2007.