

By: Senator(s) Nunnelee

To: Public Health and Welfare

SENATE BILL NO. 2061

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 such matters or a notary public and filed with
14 and approved by the judge of said court shall have the same force
15 and effect, retroactively and prospectively, in accordance with
16 the terms of said agreement as an order for modification of
17 support entered by the court, and shall be enforceable and subject
18 to subsequent modification in the same manner as is provided by
19 law for orders of the court in such cases.

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

29 receipt requested; notice shall be deemed complete as of the date
30 of delivery as evidenced by the return receipt. The required
31 notice may also be delivered by personal service in accordance
32 with Rule 4 of the Mississippi Rules of Civil Procedure insofar as
33 it may be applied to service of an administrative order or notice.
34 The defendant may accept the proposed modification by signing and
35 returning it to the department prior to the date of hearing for
36 presentation to the court for approval. In the event that the
37 defendant does not sign and return the proposed modification, the
38 court shall on the date and time previously set for hearing review
39 the proposal and make a determination as to whether it should be
40 approved in whole or in 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 pursuant to 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 pursuant to 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) In the event that a downward modification is determined
62 to be warranted pursuant to the guidelines contained in subsection
63 (3), the noncustodial parent's arrearage, if any, shall not be a
64 basis for contesting the downward modification in any subsequent
65 legal proceedings.

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