

By: Senator(s) Dearing

To: Public Health and
Welfare; Judiciary, Division
A

SENATE BILL NO. 2147

1 AN ACT TO AMEND SECTION 93-9-11, MISSISSIPPI CODE OF 1972, TO
2 ENACT A STATUTE OF LIMITATIONS ON PATERNITY ACTIONS; TO AMEND
3 SECTION 93-9-28, MISSISSIPPI CODE OF 1972, TO REQUIRE THAT MOTHERS
4 BE INFORMED OF THE EXISTENCE OF THE STATUTE OF LIMITATIONS; TO
5 AMEND SECTIONS 93-11-103 AND 93-11-119, MISSISSIPPI CODE OF 1972,
6 TO REQUIRE THE DEPARTMENT OF HUMAN SERVICES TO SEEK AN ORDER OF
7 VISITATION FOR THE NONCUSTODIAL PARENT CONCURRENTLY WITH THE CHILD
8 SUPPORT PROCEEDINGS; AND FOR RELATED PURPOSES.

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

10 **SECTION 1.** Section 93-9-11, Mississippi Code of 1972, is
11 amended as follows:

12 93-9-11. Any action brought under this chapter to establish
13 paternity shall be brought on or before the day the child who is
14 the subject of the action is of the age of eighteen (18) months or
15 be forever barred.

16 **SECTION 2.** Section 93-9-28, Mississippi Code of 1972, is
17 amended as follows:

18 93-9-28. (1) The Mississippi Department of Health in
19 cooperation with the Mississippi Department of Human Services
20 shall develop a form and procedure which may be used to secure a
21 voluntary acknowledgement of paternity from the mother and father
22 of any child born out of wedlock in Mississippi. The form shall
23 clearly state on its face that the execution of the
24 acknowledgement of paternity shall result in the same legal effect
25 as if the father and mother had been married at the time of the
26 birth of the child. When such form has been completed according
27 to the established procedure and the signatures of both the mother
28 and father have been notarized, then such voluntary
29 acknowledgement shall constitute a full determination of the legal
30 parentage of the child. The completed voluntary acknowledgement

31 of paternity shall be filed with the Bureau of Vital Statistics of
32 the Mississippi Department of Health. The name of the father
33 shall be entered on the certificate of birth upon receipt of the
34 completed voluntary acknowledgement.

35 (2) (a) A signed voluntary acknowledgment of paternity is
36 subject to the right of any signatory to rescind the
37 acknowledgment within the earlier of:

38 (i) Sixty (60) days; or

39 (ii) The date of a judicial proceeding relating to
40 the child, including a proceeding to establish a support order, in
41 which the signatory is a party.

42 (b) After the expiration of the sixty-day period
43 specified in subsection (2)(a)(i) of this section, a signed
44 voluntary acknowledgment of paternity may be challenged in court
45 only on the basis of fraud, duress or material mistake of fact,
46 with the burden of proof upon the challenger; the legal
47 responsibilities, including child support obligations, of any
48 signatory arising from the acknowledgment may not be suspended
49 during the pendency of the challenge, except for good cause shown.

50 (3) The Mississippi Department of Health and the Mississippi
51 Department of Human Services shall cooperate to establish
52 procedures to facilitate the voluntary acknowledgement of
53 paternity by both father and mother at the time of the birth of
54 any child born out of wedlock. Such procedures shall establish
55 responsibilities for each of the departments and for hospitals,
56 birthing centers, midwives and/or other birth attendants to seek
57 and report voluntary acknowledgements of paternity. In
58 establishing such procedures, the departments shall provide for
59 obtaining the social security account numbers of both the father
60 and mother on voluntary acknowledgements.

61 (4) Upon the birth of a child out of wedlock, the hospital,
62 birthing center, midwife or other birth attendant shall provide an
63 opportunity for the child's mother and natural father to complete

64 an acknowledgement of paternity by giving the mother and natural
65 father the appropriate forms and information developed through the
66 procedures established in paragraph (3). The hospital, birthing
67 center, midwife or other birth attendant shall be responsible for
68 providing printed information, and audiovisual material if
69 available, related to the acknowledgement of paternity, and shall
70 be required to provide notary services needed for the completion
71 of acknowledgements of paternity. The information described above
72 shall be provided to the mother and natural father, if present and
73 identifiable, within twenty-four (24) hours of birth or before the
74 mother is released. Such information, including forms, brochures,
75 pamphlets, video tapes and other media, shall be provided at no
76 cost to the hospital, birthing center or midwife by the
77 Mississippi State Department of Health, the Department of Human
78 Services or other appropriate agency. The printed information and
79 audiovisual material shall further include information as to the
80 provisions of Section 93-9-11, and the hospital, birthing center,
81 midwife or other birth attendant shall obtain written verification
82 from the mother that this information has been delivered to her.

83 **SECTION 3.** Section 93-11-103, Mississippi Code of 1972, is
84 amended as follows:

85 93-11-103. (1) Upon entry of any order for support by a
86 court of this state where the custodial parent is a recipient of
87 services under Title IV-D of the federal Social Security Act,
88 issued on or after October 1, 1996, the court entering such order
89 shall enter a separate order for withholding which shall take
90 effect immediately without any requirement that the obligor be
91 delinquent in payment. All such orders for support issued prior
92 to October 1, 1996, shall, by operation of law, be amended to
93 conform with the provisions contained herein. All such orders for
94 support issued shall:

95 (a) Contain a provision for monthly income withholding
96 procedures to take effect in the event the obligor becomes

97 delinquent in paying the order for support without further
98 amendment to the order or further action by the court; and

99 (b) Require that the payor withhold any additional
100 amount for delinquency specified in any order if accompanied by an
101 affidavit of accounting, a notarized record of overdue payments,
102 official payment record or an attested judgment for delinquency or
103 contempt. Any person who willfully and knowingly files a false
104 affidavit, record or judgment shall be subject to a fine of not
105 more than One Thousand Dollars (\$1,000.00). The Department of
106 Human Services shall be the designated agency to receive payments
107 made by income withholding in child support orders enforced by the
108 department. All withholding orders shall be on a form as
109 prescribed by the department.

110 (2) Upon entry of any order for support by a court of this
111 state where the custodial parent is not a recipient of services
112 under Title IV-D of the federal Social Security Act, issued or
113 modified or found to be in arrears on or after January 1, 1994,
114 the court entering such order shall enter a separate order for
115 withholding which shall take effect immediately. Such orders
116 shall not be subject to immediate income withholding under this
117 subsection: (a) if one (1) of the parties (i.e., noncustodial or
118 custodial parent) demonstrates, and the court finds, that there is
119 good cause not to require immediate income withholding, or (b) if
120 both parties agree in writing to an alternative arrangement. The
121 Department of Human Services or any other person or entity may be
122 the designated agency to receive payments made by income
123 withholding in all child support orders. Withholding orders shall
124 be on a form as prescribed by the department.

125 (3) If a child support order is issued or modified in the
126 state but is not subject to immediate income withholding, it
127 automatically becomes so if the court finds that a support payment
128 is thirty (30) days past due. If the support order was issued or
129 modified in another state but is not subject to immediate income

130 withholding, it becomes subject to immediate income withholding on
131 the date on which child support payments are at least thirty (30)
132 days in arrears, or (a) the date as of which the noncustodial
133 parent requests that withholding begin, (b) the date as of which
134 the custodial parent requests that withholding begin, or (c) an
135 earlier date chosen by the court whichever is earlier.

136 (4) The clerk of the court shall submit copies of such
137 orders to the obligor's payor, any additional or subsequent payor,
138 and to the Mississippi Department of Human Services Case Registry.
139 The clerk of the court, the obligee's attorney, or the department
140 may serve such immediate order for withholding by first-class mail
141 or personal delivery on the obligor's payor, superintendent,
142 manager, agent or subsequent payor, as the case may be. In a case
143 where the obligee's attorney or the department serves such
144 immediate order, the clerk of the court shall be notified in
145 writing, which notice shall be placed in the court file. There
146 shall be no need for further notice, hearing, order, process or
147 procedure before service of said order on the payor or any
148 additional or subsequent payor. The obligor may contest, if
149 grounds exist, service of the order of withholding on additional
150 or subsequent payors, by filing an action with the issuing court.
151 Such filing shall not stay the obligor's duty to support pending
152 judicial determination of the obligor's claim. Nothing herein
153 shall be construed to restrict the authority of the courts of this
154 state from entering any order it deems appropriate to protect the
155 rights of any parties involved.

156 (5) The order for withholding shall:

157 (a) Direct any payor to withhold an amount equal to the
158 order for current support;

159 (b) Direct any payor to withhold an additional amount,
160 not less than fifteen percent (15%) of the order for support,
161 until payment in full of any delinquency; * * *

162 (c) Direct the payor not to withhold in excess of the
163 amounts allowed under Section 303(b) of the Consumer Credit
164 Protection Act, being 15 USCS 1673, as amended; and

165 (d) Make appropriate provision for visitation by the
166 noncustodial parent with the child or children for whom support is
167 ordered.

168 (6) All orders for withholding may permit the Department of
169 Human Services to withhold through said withholding order
170 additional amounts to recover costs incurred through its efforts
171 to secure the support order, including, but not limited to, all
172 filing fees, court costs, service of process fees, mailing costs,
173 birth certificate certification fee, genetic testing fees, the
174 department's attorney's fees; and, in cases where the state or any
175 of its entities or divisions have provided medical services to the
176 child or the child's mother, all medical costs of prenatal care,
177 birthing, postnatal care and any other medical expenses incurred
178 by the child or by the mother as a consequence of her pregnancy or
179 delivery.

180 (7) At the time the order for withholding is entered, the
181 clerk of the court shall provide copies of the order for
182 withholding and the order for support to the obligor, which shall
183 be accompanied by a statement of the rights, remedies and duties
184 of the obligor under Sections 93-11-101 through 93-11-119. The
185 clerk of the court shall make copies available to the obligee and
186 to the department or its local attorney.

187 (8) The order for withholding shall remain in effect for as
188 long as the order for support upon which it is based.

189 (9) The failure of an order for withholding to state an
190 arrearage is not conclusive of the issue of whether an arrearage
191 is owing.

192 (10) Any order for withholding entered pursuant to this
193 section shall not be considered a garnishment.

194 (11) All existing orders for support shall become subject to
195 additional withholding if arrearages occur, subject to court
196 hearing and order. The Department of Human Services or the
197 obligee or his agent or attorney must send to each delinquent
198 obligor notice that:

199 (a) The withholding on the delinquency has commenced;

200 (b) The information along with the required affidavit
201 of accounting, notarized record of overdue payment or attested
202 judgment of delinquency or contempt has been sent to the employer;
203 and

204 (c) The obligor may file an action with the issuing
205 court on the grounds of mistake of fact. Such filing must be made
206 within thirty (30) days of receipt of the notice and shall not
207 stay the obligor's duty to support pending judicial determination
208 of the obligor's claim.

209 (12) An employer who complies with an income withholding
210 notice that is regular on its face and which is accompanied by the
211 required accounting affidavit, notarized record of overdue
212 payments or attested judgment of delinquency or contempt shall not
213 be subject to civil liability to any individual or agency for
214 conduct in compliance with the notice.

215 **SECTION 4.** Section 93-11-119, Mississippi Code of 1972, is
216 amended as follows:

217 93-11-119. (1) The rights, remedies, duties and penalties
218 created by Sections 93-11-101 through 93-11-119 are in addition to
219 and not in substitution for any other rights, remedies, duties and
220 penalties created by any other law.

221 (2) Nothing in Sections 93-11-101 through 93-11-119 shall be
222 construed as invalidating any garnishment, attachment or
223 assignment of wages or benefits instituted prior to July 1, 1985;
224 provided, however, any such garnishment, attachment or assignment
225 shall be subject to the priorities established under the
226 provisions of subsection (3) of Section 93-11-111.

227 (3) Nothing in Sections 93-11-101 through 93-11-119 shall be
228 construed as impairing the obligation of the Department of Human
229 Services to seek visitation rights for noncustodial parent
230 concurrent with the child support order proceeding.

231 **SECTION 5.** This act shall take effect and be in force from
232 and after July 1, 2007.