

REPORT OF CONFERENCE COMMITTEE

MR. SPEAKER AND MADAM PRESIDENT:

We, the undersigned conferees, have had under consideration the amendments to the following entitled BILL:

H. B. No. 839: Child support payments; arrearage in payments does not bar DHS review of order and downward modification of.

We, therefore, respectfully submit the following report and recommendation:

1. That the Senate recede from its Amendment No. 1.
2. That the House and Senate adopt the following amendment:

Amend by striking all after the enacting clause and inserting in lieu thereof the following:

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.

**Further, amend by striking the title in its entirety and
inserting in lieu thereof the following:**

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.

CONFEREES FOR THE HOUSE

X (SIGNED)
Holland

X (SIGNED)
Fredericks

X (SIGNED)
Wells-Smith

CONFEREES FOR THE SENATE

X (SIGNED)
Nunnelee

X (SIGNED)
Hyde-Smith

X (SIGNED)
Turner