

By: Representative Mims

To: Judiciary A

HOUSE BILL NO. 1157

1 AN ACT TO AMEND SECTION 43-19-34, MISSISSIPPI CODE OF 1972,
2 TO CLARIFY THE METHOD OF REQUESTING A MODIFICATION OF A CHILD
3 SUPPORT ORDER ENFORCED BY THE DEPARTMENT OF HUMAN SERVICES; TO
4 AMEND SECTION 43-19-101, MISSISSIPPI CODE OF 1972, TO CLARIFY THAT
5 ALL CHILD SUPPORT ORDERS SHALL INCLUDE NOTICE TO THE OBLIGATED
6 PARENT'S EMPLOYER THAT MEDICAL SUPPORT FOR THE CHILD HAS BEEN
7 ORDERED; AND FOR RELATED PURPOSES.

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

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

11 43-19-34. (1) In lieu of legal proceedings instituted to
12 obtain a modification for an order for support, a written
13 stipulated agreement for modification executed by the responsible
14 parent when acknowledged before a clerk of the court having
15 jurisdiction over those matters or a notary public and filed with
16 and approved by the judge of that court shall have the same force
17 and effect, retroactively and prospectively, in accordance with
18 the terms of the agreement as an order for modification of support
19 entered by the court, and shall be enforceable and subject to
20 later modification in the same manner as is provided by law for
21 orders of the court in those cases.

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



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

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



62 change in circumstances is necessary for modification outside the
63 three-year cycle.

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

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

73 **SECTION 2.** Section 43-19-101, Mississippi Code of 1972, is
74 amended as follows:

75 43-19-101. (1) The following child support award guidelines
76 shall be a rebuttable presumption in all judicial or
77 administrative proceedings regarding the awarding or modifying of
78 child support awards in this state:

79	Number Of Children	Percentage Of Adjusted Gross Income
80	Due Support	That Should Be Awarded For Support
81	1	14%
82	2	20%
83	3	22%
84	4	24%
85	5 or more	26%

86 (2) The guidelines provided for in subsection (1) of this
87 section apply unless the judicial or administrative body awarding
88 or modifying the child support award makes a written finding or
89 specific finding on the record that the application of the
90 guidelines would be unjust or inappropriate in a particular case
91 as determined under the criteria specified in Section 43-19-103.

92 (3) The amount of "adjusted gross income" as that term is
93 used in subsection (1) of this section shall be calculated as
94 follows:



95 (a) Determine gross income from all potential sources
96 that may reasonably be expected to be available to the absent
97 parent including, but not limited to, the following: wages and
98 salary income; income from self employment; income from
99 commissions; income from investments, including dividends,
100 interest income and income on any trust account or property;
101 absent parent's portion of any joint income of both parents;
102 workers' compensation, disability, unemployment, annuity and
103 retirement benefits, including an individual retirement account
104 (IRA); any other payments made by any person, private entity,
105 federal or state government or any unit of local government;
106 alimony; any income earned from an interest in or from inherited
107 property; any other form of earned income; and gross income shall
108 exclude any monetary benefits derived from a second household,
109 such as income of the absent parent's current spouse;

110 (b) Subtract the following legally mandated deductions:

111 (i) Federal, state and local taxes. Contributions
112 to the payment of taxes over and beyond the actual liability for
113 the taxable year shall not be considered a mandatory deduction;

114 (ii) Social security contributions;

115 (iii) Retirement and disability contributions
116 except any voluntary retirement and disability contributions;

117 (c) If the absent parent is subject to an existing
118 court order for another child or children, subtract the amount of
119 that court-ordered support;

120 (d) If the absent parent is also the parent of another
121 child or other children residing with him, then the court may
122 subtract an amount that it deems appropriate to account for the
123 needs of said child or children;

124 (e) Compute the total annual amount of adjusted gross
125 income based on paragraphs (a) through (d), then divide this
126 amount by twelve (12) to obtain the monthly amount of adjusted
127 gross income.



128 Upon conclusion of the calculation of paragraphs (a) through
129 (e), multiply the monthly amount of adjusted gross income by the
130 appropriate percentage designated in subsection (1) to arrive at
131 the amount of the monthly child support award.

132 (4) In cases in which the adjusted gross income as defined
133 in this section is more than Fifty Thousand Dollars (\$50,000.00)
134 or less than Five Thousand Dollars (\$5,000.00), the court shall
135 make a written finding in the record as to whether or not the
136 application of the guidelines established in this section is
137 reasonable.

138 (5) The Department of Human Services shall review the
139 appropriateness of these guidelines beginning January 1, 1994, and
140 every four (4) years thereafter and report its findings to the
141 Legislature no later than the first day of the regular legislative
142 session of that year. The Legislature shall thereafter amend
143 these guidelines when it finds that amendment is necessary to
144 ensure that equitable support is being awarded in all cases
145 involving the support of minor children.

146 (6) All orders involving support of minor children, as a
147 matter of law, shall include reasonable medical support. Notice
148 to the obligated parent's employer that medical support has been
149 ordered shall be on a form as prescribed by the Department of
150 Human Services. In any case in which the support of any child is
151 involved, the court shall make the following findings either on
152 the record or in the judgment:

153 (a) The availability to all parties of health insurance
154 coverage for the child(ren);

155 (b) The cost of health insurance coverage to all
156 parties.

157 The court shall then make appropriate provisions in the
158 judgment for the provision of health insurance coverage for the
159 child(ren) in the manner that is in the best interests of the
160 child(ren). If the court requires the custodial parent to obtain



161 the coverage then its cost shall be taken into account in
162 establishing the child support award. If the court determines
163 that health insurance coverage is not available to any party or
164 that it is not available to either party at a cost that is
165 reasonable as compared to the income of the parties, then the
166 court shall make specific findings as to such either on the record
167 or in the judgment. In that event, the court shall make
168 appropriate provisions in the judgment for the payment of medical
169 expenses of the child(ren) in the absence of health insurance
170 coverage.

171 **SECTION 3.** This act shall take effect and be in force from
172 and after its passage.

