

By: Representative Mims

To: Judiciary A

HOUSE BILL NO. 1157  
(As Sent to Governor)

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; TO AMEND SECTION 43-19-103, MISSISSIPPI CODE OF 1972, TO  
8 PROVIDE THAT PAYMENT OF CHILD CARE EXPENSES BY THE OBLIGEE  
9 OVERCOMES THE PRESUMPTION THAT CHILD SUPPORT GUIDELINES ARE  
10 APPROPRIATE; AND FOR RELATED PURPOSES.

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

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

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

25 (2) With respect to a child support order in cases initiated  
26 or enforced by the Department of Human Services under Title IV-D  
27 of the Social Security Act, in which the department has determined  
28 that a modification is appropriate, the department shall send a  
29 motion and notice of intent to modify the order, together with the  
30 proposed modification of the order under this section to the last



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

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



64 department's review and adjustment procedure. Proof of a material  
65 change in circumstances is necessary for modification outside the  
66 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 **SECTION 2.** Section 43-19-101, Mississippi Code of 1972, is  
77 amended as follows:

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

82	Number Of Children	Percentage Of Adjusted Gross Income
83	Due Support	That Should Be Awarded For Support
84	1	14%
85	2	20%
86	3	22%
87	4	24%
88	5 or more	26%

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



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

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

113           (b) Subtract the following legally mandated deductions:

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

117           (ii) Social security contributions;

118           (iii) Retirement and disability contributions  
119 except any voluntary retirement and disability contributions;

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

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



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

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

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

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

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

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

158           (b) The cost of health insurance coverage to all  
159 parties.



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

174           **SECTION 3.** Section 43-19-103, Mississippi Code of 1972, is  
175 amended as follows:

176           43-19-103. The rebuttable presumption as to the justness or  
177 appropriateness of an award or modification of a child support  
178 award in this state, based upon the guidelines established by  
179 Section 43-19-101, may be overcome by a judicial or administrative  
180 body awarding or modifying the child support award by making a  
181 written finding or specific finding on the record that the  
182 application of the guidelines would be unjust or inappropriate in  
183 a particular case as determined according to the following  
184 criteria:

185           (a) Extraordinary medical, psychological, educational  
186 or dental expenses.

187           (b) Independent income of the child.

188           (c) The payment of both child support and spousal  
189 support to the obligee.

190           (d) Seasonal variations in one or both parents' incomes  
191 or expenses.



192 (e) The age of the child, taking into account the  
193 greater needs of older children.

194 (f) Special needs that have traditionally been met  
195 within the family budget even though the fulfilling of those needs  
196 will cause the support to exceed the proposed guidelines.

197 (g) The particular shared parental arrangement, such as  
198 where the noncustodial parent spends a great deal of time with the  
199 children thereby reducing the financial expenditures incurred by  
200 the custodial parent, or the refusal of the noncustodial parent to  
201 become involved in the activities of the child, or giving due  
202 consideration to the custodial parent's homemaking services.

203 (h) Total available assets of the obligee, obligor and  
204 the child.

205 (i) Payment by the obligee of child care expenses in  
206 order that the obligee may seek or retain employment, or because  
207 of the disability of the obligee.

208 (j) Any other adjustment which is needed to achieve an  
209 equitable result which may include, but not be limited to, a  
210 reasonable and necessary existing expense or debt.

211 **SECTION 4.** This act shall take effect and be in force from  
212 and after its passage.

