

By: Senator(s) Parks, Dearing

To: Business and Financial  
Institutions

COMMITTEE SUBSTITUTE  
FOR  
SENATE BILL NO. 2344

1 AN ACT TO AMEND SECTION 11-35-23, MISSISSIPPI CODE OF 1972,  
2 TO PROVIDE THAT IF A GARNISHEE IS A BANK OR OTHER FINANCIAL  
3 INSTITUTION, AND ITS INDEBTEDNESS TO THE DEFENDANT CONSISTS OF  
4 FUNDS THAT THE DEFENDANT HAS ON DEPOSIT WITH THE BANK OR OTHER  
5 FINANCIAL INSTITUTION AT THE TIME OF SERVICE OF THE WRIT OF  
6 GARNISHMENT, THEN THE GARNISHEE SHALL BE HELD TO ACCOUNT FOR ONLY  
7 THE FUNDS ON DEPOSIT BETWEEN THE TIME OF SERVICE OF THE WRIT OF  
8 GARNISHMENT AND THE TIME OF SERVICE OF ITS ANSWER TO THE WRIT, AND  
9 THE GARNISHEE SHALL HAVE NO OBLIGATION TO ACCOUNT FOR ADDITIONAL  
10 DEPOSITS ACCRUING AFTER THE TIME OF SERVICE OF ITS ANSWER; TO  
11 PROVIDE THAT IF THE BANK OR OTHER FINANCIAL INSTITUTION IS NOT  
12 INDEBTED TO THE DEFENDANT AT THE TIME OF THE SERVICE OF THE WRIT  
13 OF GARNISHMENT OR DOES NOT HAVE POSSESSION OF PROPERTY OF THE  
14 DEFENDANT AT THE TIME OF SERVICE OF THE WRIT, THE GARNISHEE SHALL  
15 NOT BE HELD TO ACCOUNT FOR ANY INDEBTEDNESS THAT ARISES SUBSEQUENT  
16 TO SERVICE OF THE ANSWER OR PROPERTY THAT MAY COME INTO ITS HANDS  
17 SUBSEQUENT TO THE SERVICE OF THE WRIT OF GARNISHMENT; TO AMEND  
18 SECTION 27-3-33, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT THE  
19 DEPARTMENT OF REVENUE SHALL NOT SERVE MORE THAN 25 DISTRESS  
20 WARRANTS ON THE SAME FINANCIAL INSTITUTION IN A SINGLE DAY; TO  
21 PROVIDE THAT A FINANCIAL INSTITUTION SERVED WITH A DISTRESS  
22 WARRANT MAY CHARGE A FEE TO THE CUSTOMER OF THE FINANCIAL  
23 INSTITUTION; TO PROVIDE THAT ONCE THE DEPARTMENT OF REVENUE  
24 RECEIVES AN ANSWER TO A DISTRESS WARRANT FROM A FINANCIAL  
25 INSTITUTION INDICATING THAT THE TAXPAYER NAMED IN THE DISTRESS  
26 WARRANT HAS NO ACCOUNTS WITH THE FINANCIAL INSTITUTION, THE  
27 DEPARTMENT OF REVENUE MAY NOT SERVE ANY ADDITIONAL DISTRESS  
28 WARRANTS ON THE SAME FINANCIAL INSTITUTION FOR A PERIOD OF AT  
29 LEAST ONE YEAR; TO AMEND SECTIONS 27-7-57, 27-13-31 AND 27-65-59,  
30 MISSISSIPPI CODE OF 1972, IN CONFORMITY THERETO; AND FOR RELATED  
31 PURPOSES.

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



33           **SECTION 1.** Section 11-35-23, Mississippi Code of 1972, is  
34 amended as follows:

35           11-35-23. (1) (a) Except for wages, salary or other  
36 compensation, all property in the hands of the garnishee belonging  
37 to the defendant at the time of the service of the writ of  
38 garnishment shall be bound by and subject to the lien of the  
39 judgment, decree or attachment on which the writ \* \* \* has been  
40 issued. If the garnishee \* \* \* surrenders the property to the  
41 sheriff or other officer serving the writ, the officer shall  
42 receive the \* \* \* property and, in case the garnishment issued on  
43 a judgment or decree, shall make sale \* \* \* of the property as if  
44 levied on by virtue of an execution, and return the money  
45 arising \* \* \* from the sale to satisfy the judgment; and if the  
46 garnishment issued on an attachment, the officer shall dispose of  
47 the property as if it were levied upon by a writ of  
48 attachment. \* \* \* Any indebtedness of the garnishee to the  
49 defendant, except for wages, salary or other compensation, shall  
50 be bound from the time of the service of the writ of garnishment,  
51 and be appropriable to the satisfaction of the judgment or decree,  
52 or liable to be condemned in the attachment.

53           (b) If the garnishee is a bank or other financial  
54 institution, and its indebtedness to the defendant consists of  
55 funds that the defendant has on deposit with the bank or other  
56 financial institution at the time of service of the writ of  
57 garnishment, then the garnishee shall be held to account for only



58 the funds on deposit between the time of service of the writ of  
59 garnishment and the time of service of its answer to the writ, and  
60 the garnishee shall have no obligation to account for additional  
61 deposits accruing after the time of service of its answer. If the  
62 bank or other financial institution is not indebted to the  
63 defendant at the time of the service of the writ of garnishment or  
64 does not have possession of property of the defendant at the time  
65 of service of the writ, the garnishee may serve its answer and  
66 shall not be held to account for any indebtedness that arises  
67 subsequent to service of its answer or property that may come into  
68 its hands subsequent to the service of the writ of garnishment.

69 (2) The court issuing any writ of garnishment shall  
70 show \* \* \* on the writ the amount of the claim of the plaintiff  
71 and the court costs in the proceedings and should at any time  
72 during the pendency of \* \* \* the proceedings in the court a  
73 judgment be rendered for a different amount, then the court shall  
74 notify the garnishee of the correct amount due by the defendant  
75 under \* \* \* the writ.

76 (3) (a) Except for judgments, liens, attachments, fees or  
77 charges owed to the state or its political subdivisions; wages,  
78 salary or other compensation in the hands of the garnishee  
79 belonging to the defendant at the time of the service of the writ  
80 of garnishment shall not be bound by nor subject to the lien of  
81 the judgment, decree or attachment on which the writ shall have  
82 been issued when the writ of garnishment is issued on a judgment



83 based upon a claim or debt that is less than One Hundred Dollars  
84 (\$100.00), excluding court costs.

85 (b) If the garnishee \* \* \* is indebted or shall become  
86 indebted to the defendant for wages, salary or other compensation  
87 during the first thirty (30) days after service of a proper writ  
88 of garnishment, the garnishee shall pay over to the employee all  
89 of such indebtedness, and thereafter, the garnishee shall retain  
90 and the writ shall bind the nonexempt percentage of disposable  
91 earnings, as provided by Section 85-3-4, for \* \* \* the period of  
92 time as is necessary to accumulate a sum equal to the amount shown  
93 on the writ as due, even if \* \* \* the period of time extends  
94 beyond the return day of the writ. Unless the court otherwise  
95 authorizes the garnishee to make earlier payments or releases and  
96 except as otherwise provided in this section, the garnishee shall  
97 retain all sums collected pursuant to the writ and make only one  
98 (1) payment into court at such time as the total amount shown due  
99 on the writ has been accumulated \* \* \*, however, at least one (1)  
100 payment per year shall be made to the court of the amount that has  
101 been withheld during the preceding year. Should the employment of  
102 the defendant for any reason be terminated with the garnishee,  
103 then the garnishee shall not later than fifteen (15) days after  
104 the termination of \* \* \* the employment, report \* \* \* the  
105 termination to the court and pay into the court all sums as have  
106 been withheld from the defendant's disposable earnings. If the  
107 plaintiff in garnishment contest the answer of the garnishee, as



108 now provided by law in such cases, and proves to the court the  
109 deficiency or untruth of the garnishee's answer, then the court  
110 shall render judgment against the garnishee for such amount as  
111 would have been subject to the writ had the \* \* \* sum not been  
112 released to the defendant; \* \* \* however, any garnishee who files  
113 a timely and complete answer shall not be liable for any error  
114 made in good faith in determining or withholding the amount of  
115 wages, salary or other compensation of a defendant which are  
116 subject to the writ.

117 (4) Wages, salaries or other compensation as used in this  
118 section shall mean wages, salaries, commissions, bonuses or other  
119 compensation paid for employment purposes only.

120 (5) The circuit clerk may, in his or her discretion, spread  
121 on the minutes of the county or circuit court, as the case may be,  
122 an instruction that all garnishment defendants shall send all  
123 garnishment monies to the attorney of record or in the case where  
124 there is more than one (1) attorney of record, then to the  
125 first-named attorney of record, and not to the clerk. The payment  
126 schedule shall be the same as subsection (3) (b) of this section.

127 (6) All payments made pursuant to a garnishment issued out  
128 of the justice court shall be made directly to the plaintiff or to  
129 the plaintiff's attorney as indicated by the plaintiff in his or  
130 her suggestion for writ of garnishment. The employer shall notify  
131 the court and the plaintiff or the plaintiff's attorney when a



132 judgment is satisfied or when the employee is no longer employed  
133 by the employer.

134 (7) If the plaintiff in a garnishment is the Department of  
135 Employment Security, the garnishee shall make monthly payments to  
136 the department until such time as the total amount shown due on  
137 the writ has been accumulated.

138 **SECTION 2.** Section 27-3-33, Mississippi Code of 1972, is  
139 amended as follows:

140 27-3-33. (1) The Commissioner of Revenue shall have the  
141 power, authority and duty to direct that proceedings, actions and  
142 prosecutions be instituted to enforce the laws relating to the  
143 penalties, liabilities, and punishment of all persons, officers or  
144 agents or corporations, or others required by law to make returns  
145 of taxable property, for failure or neglect to comply with such  
146 provisions of the tax law; and to cause complaints to be made  
147 against assessors, boards of supervisors, and other officers,  
148 whose duties concern assessments, in any court of competent  
149 jurisdiction for their removal for official misconduct or neglect  
150 of such duty, as provided by law in such cases.

151 (2) The Commissioner of Revenue shall have the power,  
152 authority and duty to proceed by suit in the chancery court of the  
153 residence of the taxpayer or, in the case of a nonresident, in the  
154 Chancery Court of the First Judicial District of Hinds County,  
155 against all persons, corporations, companies and associations of  
156 persons for all past due and unpaid taxes, together with any



157 penalties, damages and interest due thereon, of any kind whatever,  
158 either of the state or any county, municipality, drainage, levee,  
159 or other taxing district, or any subdivision thereof, and for all  
160 past due obligations and indebtedness of any character due and  
161 owing to them or any of them; but not, however, including  
162 penalties for the violation of the antitrust laws; and, provided  
163 that the duty and obligation of the Commissioner of Revenue  
164 hereunder accrues only at such time as the tax collector of the  
165 county, municipality, drainage, levee, or other taxing district,  
166 or any subdivision thereof, primarily responsible for the  
167 collection of taxes for the district has exhausted all legal  
168 remedies provided by the laws of this state.

169 (3) All suits by the Commissioner of Revenue under the  
170 provisions of this section, or under the provisions of Section  
171 27-3-37 or Section 27-3-39, shall be in his official capacity for  
172 the use of the state, county, municipality, levee board or other  
173 taxing district interested; and he shall not be liable for costs,  
174 and may appeal without bond. \* \* \* The suits may be tried at the  
175 return term and shall take precedence over other suits.

176 (4) All warrants issued by the Commissioner of Revenue for  
177 the collection of any taxes imposed by statute and collected by  
178 the Department of Revenue shall be used to levy on salaries,  
179 compensation or other monies due the delinquent taxpayer. Subject  
180 to the provisions of subsection (5) of this section, the warrants  
181 shall be served by mail or by delivery by an agent of the



182 Department of Revenue on the person or entity responsible or  
183 liable for the payment of the monies to the delinquent taxpayer.  
184 Once served, the employer or other person owing compensation due  
185 the delinquent taxpayer shall pay the monies over to the  
186 Department of Revenue in complete or partial satisfaction of the  
187 tax liability. An answer shall be made within thirty (30) days  
188 after service of the warrant in the form and manner determined  
189 satisfactory by the commissioner. Failure to pay the money over  
190 to the Department of Revenue as required by this section shall  
191 result in the served party being personally liable for the full  
192 amount of the monies owed and the levy and collection process may  
193 be issued against the party in the same manner as other taxes.  
194 Except as otherwise provided by this section, the answer, the  
195 amount payable under the warrant and the obligation of the payor  
196 to continue payment shall be governed by the garnishment laws of  
197 this state but shall be payable to the Department of Revenue.

198 (5) (a) As used in this subsection, "financial institution"  
199 means a bank, trust company, mutual savings bank, savings and loan  
200 association or credit union authorized to do business and accept  
201 deposits in this state under state or federal law.

202 (b) Not more than twenty-five (25) distress warrants  
203 may be served on the same financial institution in a single day.

204 (c) Once the Department of Revenue receives an answer  
205 to a distress warrant from a financial institution indicating that  
206 the taxpayer named in the distress warrant has no accounts with





207 the financial institution, the Department of Revenue may not serve  
208 any additional distress warrants on the same financial institution  
209 for a period of at least one (1) year. If a financial institution  
210 has answered a distress warrant served on the financial  
211 institution in the previous six (6) months that it has no accounts  
212 for the named taxpayer, the financial institution may disregard  
213 the distress warrant and shall not be obligated to file an answer  
214 to the subsequent distress warrant nor be liable for its failure  
215 to respond.

216 **SECTION 3.** Section 27-7-57, Mississippi Code of 1972, is  
217 amended as follows:

218 27-7-57. Subject to the provision of Section 27-3-33(5), the  
219 commissioner may issue a warrant under official seal directed to  
220 the sheriff of any county of the state, or to a special agent of  
221 the \* \* \* department, commanding him to immediately seize and sell  
222 the real and personal property of the person owning the \* \* \*  
223 property found within the county in which the judgment is enrolled  
224 for the payment of the amount of tax, penalties, and interest, if  
225 any, as set forth in the warrant, and the cost of executing the  
226 warrant.

227 **SECTION 4.** Section 27-13-31, Mississippi Code of 1972, is  
228 amended as follows:

229 27-13-31. Subject to the provision of Section 27-3-33(5),  
230 the commissioner may issue a warrant under official seal directed  
231 to the sheriff of any county of the state, or to a special agent



232 of the \* \* \* department, commanding him to immediately seize and  
233 sell the real and personal property of the person owning the \* \* \*  
234 property found within the county in which the judgment is enrolled  
235 for the payment of the amount of tax, penalties, and interest, if  
236 any, as set forth in the warrant, and the cost of executing the  
237 warrant.

238         **SECTION 5.** Section 27-65-59, Mississippi Code of 1972, is  
239 amended as follows:

240         27-65-59. Subject to the provision of Section 27-3-33(5),  
241 the commissioner may issue a warrant under official seal directed  
242 to the sheriff of any county of the state, or to a special agent  
243 of the \* \* \* department, commanding him to immediately seize and  
244 sell the real and personal property of the person owning the \* \* \*  
245 property found within the county in which the judgment is enrolled  
246 for the payment of the amount of tax, damages and interest, if  
247 any, as set forth in the warrant, and the cost of executing the  
248 warrant.

249         **SECTION 6.** The Department of Revenue shall, within sixty  
250 (60) days after the effective day of this act, adopt  
251 administrative procedures consistent with this act to assist  
252 financial institutions facing significant challenges with meeting  
253 requirements to respond to Department of Revenue distress warrants  
254 for money owed to taxpayers and minimize the impact on financial  
255 institutions for the increased administrative burdens in  
256 responding to Department of Revenue distress warrants.



257           **SECTION 7.** This act shall take effect and be in force from  
258 and after July 1, 2016.

