

By: Senator(s) Parks, Dearing

To: Business and Financial
Institutions

SENATE BILL NO. 2344
(As Passed the Senate)

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, and shall stand repealed on June 30, 2016.

