

By: Representative Clark

To: Judiciary A

HOUSE BILL NO. 1098

1 AN ACT TO AMEND SECTION 43-19-48, MISSISSIPPI CODE OF 1972,  
 2 TO AUTHORIZE THE MISSISSIPPI DEPARTMENT OF HUMAN SERVICES TO USE  
 3 ADDITIONAL METHODS OF COMMUNICATION TO SEND NOTICES RELATING TO  
 4 ENCUMBRANCES OF ASSETS FOR CHILD SUPPORT TO FINANCIAL INSTITUTIONS  
 5 IF ALLOWED BY THE FINANCIAL INSTITUTIONS; AND FOR RELATED  
 6 PURPOSES.

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

8 **SECTION 1.** Section 43-19-48, Mississippi Code of 1972, is  
 9 amended as follows:

10 43-19-48. (1) The Department of Human Services and  
 11 financial institutions doing business in the state are required to  
 12 enter into agreements:

13 (a) To develop and operate a data match system, using  
 14 automated data exchanges, in which each such financial institution  
 15 is required to provide for each calendar quarter the name, record  
 16 address, social security number or other taxpayer identification  
 17 number, and other identifying information for each noncustodial  
 18 parent who maintains an account at such institution and who owes  
 19 past-due support, as identified by the Department of Human



20 Services by name and social security number or other taxpayer  
21 identification number;

22 (b) To encumber or surrender, as the case may be,  
23 assets held by such institution on behalf of any noncustodial  
24 parent who is subject to a child support lien; and

25 (c) To provide for payment of reasonable fees to  
26 financial institutions for conducting data matches, and for  
27 responding to other requests made pursuant to this section, with  
28 such fees not to exceed the actual costs incurred by such  
29 financial institutions.

30 (2) When the operation of such data match system results in  
31 the location of an account of a noncustodial parent who owes  
32 past-due support, or when such account is located through any  
33 means, the department may request and shall receive additional  
34 financial or other information including account numbers, names  
35 and social security numbers on record for accounts, and account  
36 balances, from any financial institution needed to establish,  
37 modify or enforce a support order.

38 (3) The department shall have the authority to encumber and  
39 seize assets held by an obligor in a financial institution doing  
40 business in Mississippi. Such assets shall be encumbered for  
41 either:

42 (a) A forty-five-day period; or

43 (b) Until such time as the issue of overdue support is  
44 resolved, provided the obligor has filed a petition for hearing



45 with a court of appropriate jurisdiction and the financial  
46 institution receives written notice thereof from the department  
47 before the end of the said forty-five-day period.

48 (4) Notice of such encumbrance initiated by the department  
49 shall be provided to the financial institution and to the obligor:

50 (a) The department shall send, by certified mail or  
51 other approved types of communication allowed by the financial  
52 institution, notice to the financial institution with which the  
53 account is placed, directing that the financial institution shall:

54 (i) Immediately encumber funds in any account(s)  
55 in which the obligor has an interest, and to the extent of the  
56 debt indicated in the notice from the department;

57 (ii) Forward the encumbered funds to the  
58 department after either the forty-five-day period stated in  
59 subsection 3(a) of this section, or a determination favorable to  
60 the department by a court of appropriate jurisdiction; or

61 (iii) In the event the obligor prevails before the  
62 court, immediately release said funds to the obligor.

63 (b) Notice shall be delivered to the obligor at the  
64 current mailing address as recorded by the department. Such  
65 notice shall be sent by regular mail at the commencement of the  
66 action described herein.

67 (c) The financial institution shall not disclose to an  
68 account holder or the depositor that the name of such person has  
69 been received from or furnished to the department. The financial



70 institution shall disclose to its account holders or its  
71 depositors that under the data match system the department has the  
72 authority to request certain identifying information on the  
73 account holders' or the depositor's accounts.

74 (5) Challenges to encumbrance of an account:

75 (a) Challenges to such levy for child support arrearage  
76 may be initiated only by the obligor or by an account holder of  
77 interest.

78 (b) Challenges shall be made by the filing of a  
79 petition for hearing by the obligor in a court of appropriate  
80 jurisdiction under Rule 81(d)(2) of the Mississippi Rules of Civil  
81 Procedure. Service upon the department shall be as prescribed by  
82 Rule 4(d)(5) of the Mississippi Rules of Civil Procedure.

83 (c) Grounds for the petition challenging the  
84 encumbrance shall be limited to:

85 (i) Mistakes of identity; or

86 (ii) Mistakes in amount of overdue support.

87 (6) Liability of the financial institution and the  
88 department:

89 (a) Neither the department nor the financial  
90 institution shall be liable for any applicable early withdrawal  
91 penalties on the obligor's account(s).

92 (b) A financial institution shall be absolutely immune  
93 from any civil liability under any law or regulation to any person  
94 for the disclosure of or failure to disclose any information



95 pursuant to this chapter or for the escrow, encumbrance, seizure  
96 or surrender of any assets held by the financial institution in  
97 response to any notice issued by the Department of Human Services,  
98 the Child Support Unit or any contractors or agents thereof unless  
99 the disclosure or failure to disclose was willful or intentional,  
100 or for any other action taken in good faith to comply with the  
101 requirements of this chapter.

102 (7) Any amount encumbered and forwarded by the financial  
103 institution under this section shall not exceed the arrearage owed  
104 by the obligor.

105 (8) The provisions herein and any other relevant sections  
106 shall be employed equally by authorized contractors of the  
107 department to collect delinquent support payments.

108 (9) A financial institution shall not be liable under  
109 federal or state law to any person:

110 (a) For any disclosure of information to the Department  
111 of Human Services;

112 (b) For encumbering or forwarding any assets held by  
113 such financial institution in response to a notice of lien or  
114 levy;

115 (c) For any other action taken in good faith to comply  
116 with the requirements of subsection (1) (a) or (b) above.

117 (10) **Definitions.** For purposes of this section:

118 (a) The term "financial institution" has the meaning  
119 given to such by Section 81-12-3, Mississippi Code of 1972, and



120 shall include, but not be limited to, credit unions, stock  
121 brokerages, public or private entities administering retirement,  
122 savings, annuities, life insurance and/or pension funds;

123 (b) The term "account" means any money held in the name  
124 of the account owner individually or jointly with another,  
125 including, but not limited to, a \* \* \* deposit account, demand  
126 account, member account, time certificate of deposit, share  
127 account, checking or negotiable withdrawal order account, savings  
128 account, time deposit account or money-market mutual fund account.

129 (11) Failure to comply with the provisions of this section  
130 or the willful rendering of false information shall subject the  
131 financial institution to a fine of not less than One Thousand  
132 Dollars (\$1,000.00).

133 **SECTION 2.** This act shall take effect and be in force from  
134 and after July 1, 2018.

