

By: Representative Clark

To: Judiciary A

HOUSE BILL NO. 1151

1 AN ACT TO AMEND SECTION 93-11-65, MISSISSIPPI CODE OF 1972,
 2 TO PROVIDE THAT OVERDUE CHILD SUPPORT REMAINS PAYABLE TO THE
 3 CUSTODIAL PARENT OR GUARDIAN AFTER THE EMANCIPATION OF A CHILD
 4 UNLESS THE COURT AFFIRMATIVELY DETERMINES OTHERWISE; TO AMEND
 5 SECTION 93-11-103, MISSISSIPPI CODE OF 1972, TO CLARIFY THAT THE
 6 AMOUNT OF CHILD SUPPORT ARREARAGES WITHHELD FROM LUMP SUM PAYMENTS
 7 BY AN EMPLOYER TO THE OBLIGOR MAY NOT EXCEED THE AMOUNT THAT THE
 8 EMPLOYER WOULD HAVE WITHHELD IF THE LUMP SUM HAD BEEN PAID AS THE
 9 EMPLOYEE'S USUAL EARNINGS; TO AMEND SECTION 93-11-111, MISSISSIPPI
 10 CODE OF 1972, TO CLARIFY THAT THE EMPLOYER OF AN OBLIGOR FOR CHILD
 11 SUPPORT IS ENTITLED TO THE FEE FOR EACH PAY PERIOD FROM WHICH
 12 INCOME IS WITHHELD AND THAT THE FEE SHALL BE WITHHELD FROM THE
 13 INCOME OF THE OBLIGOR IN ADDITION TO THE SUPPORT PAYMENTS; AND FOR
 14 RELATED PURPOSES.

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

16 **SECTION 1.** Section 93-11-65, Mississippi Code of 1972, is
 17 amended as follows:

18 93-11-65. (1) (a) In addition to the right to proceed
 19 under Section 93-5-23, Mississippi Code of 1972, and in addition
 20 to the remedy of habeas corpus in proper cases, and other existing
 21 remedies, the chancery court of the proper county shall have
 22 jurisdiction to entertain suits for the custody, care, support and
 23 maintenance of minor children and to hear and determine all such
 24 matters, and shall, if need be, require bond, sureties or other



25 guarantee to secure any order for periodic payments for the
26 maintenance or support of a child. In the event a legally
27 responsible parent has health insurance available to him or her
28 through an employer or organization that may extend benefits to
29 the dependents of such parent, any order of support issued against
30 such parent may require him or her to exercise the option of
31 additional coverage in favor of such children as he or she is
32 legally responsible to support. Proceedings may be brought by or
33 against a resident or nonresident of the State of Mississippi,
34 whether or not having the actual custody of minor children, for
35 the purpose of judicially determining the legal custody of a
36 child. All actions herein authorized may be brought in the county
37 where the child is actually residing, or in the county of the
38 residence of the party who has actual custody, or of the residence
39 of the defendant. Process shall be had upon the parties as
40 provided by law for process in person or by publication, if they
41 be nonresidents of the state or residents of another jurisdiction
42 or are not found therein after diligent search and inquiry or are
43 unknown after diligent search and inquiry; provided that the court
44 or chancellor in vacation may fix a date in termtime or in
45 vacation to which process may be returnable and shall have power
46 to proceed in termtime or vacation. Provided, however, that if
47 the court shall find that both parties are fit and proper persons
48 to have custody of the children, and that either party is able to
49 adequately provide for the care and maintenance of the children,



50 the chancellor may consider the preference of a child of twelve
51 (12) years of age or older as to the parent with whom the child
52 would prefer to live in determining what would be in the best
53 interest and welfare of the child. The chancellor shall place on
54 the record the reason or reasons for which the award of custody
55 was made and explain in detail why the wishes of any child were or
56 were not honored.

57 (b) An order of child support shall specify the sum to
58 be paid weekly or otherwise. In addition to providing for support
59 and education, the order shall also provide for the support of the
60 child prior to the making of the order for child support, and such
61 other expenses as the court may deem proper.

62 (c) The court may require the payment to be made to the
63 custodial parent, or to some person or corporation to be
64 designated by the court as trustee, but if the child or custodial
65 parent is receiving public assistance, the Department of Human
66 Services shall be made the trustee.

67 (d) The noncustodial parent's liabilities for past
68 education and necessary support and maintenance and other expenses
69 are limited to a period of one (1) year next preceding the
70 commencement of an action.

71 (2) Provided further, that where the proof shows that both
72 parents have separate incomes or estates, the court may require
73 that each parent contribute to the support and maintenance of the
74 children in proportion to the relative financial ability of each.



75 (3) Whenever the court has ordered a party to make periodic
76 payments for the maintenance or support of a child, but no bond,
77 sureties or other guarantee has been required to secure such
78 payments, and whenever such payments as have become due remain
79 unpaid for a period of at least thirty (30) days, the court may,
80 upon petition of the person to whom such payments are owing, or
81 such person's legal representative, enter an order requiring that
82 bond, sureties or other security be given by the person obligated
83 to make such payments, the amount and sufficiency of which shall
84 be approved by the court. The obligor shall, as in other civil
85 actions, be served with process and shall be entitled to a hearing
86 in such case.

87 (4) When a charge of abuse or neglect of a child first
88 arises in the course of a custody or maintenance action pending in
89 the chancery court pursuant to this section, the chancery court
90 may proceed with the investigation, hearing and determination of
91 such abuse or neglect charge as a part of its hearing and
92 determination of the custody or maintenance issue as between the
93 parents, as provided in Section 43-21-151, notwithstanding the
94 other provisions of the Youth Court Law. The proceedings in
95 chancery court on the abuse or neglect charge shall be
96 confidential in the same manner as provided in youth court
97 proceedings, and the chancery court shall appoint a guardian ad
98 litem in such cases, as provided under Section 43-21-121 for youth
99 court proceedings, who shall be an attorney. In determining



100 whether any portion of a guardian ad litem's fee shall be assessed
101 against any party or parties as a cost of court for reimbursement
102 to the county, the court shall consider each party's individual
103 ability to pay. Unless the chancery court's jurisdiction has been
104 terminated, all disposition orders in such cases for placement
105 with the Department of Human Services shall be reviewed by the
106 court or designated authority at least annually to determine if
107 continued placement with the department is in the best interest of
108 the child or the public.

109 (5) Each party to a paternity or child support proceeding
110 shall notify the other within five (5) days after any change of
111 address. In addition, the noncustodial and custodial parent shall
112 file and update, with the court and with the state case registry,
113 information on that party's location and identity, including
114 social security number, residential and mailing addresses,
115 telephone numbers, photograph, driver's license number, and name,
116 address and telephone number of the party's employer. This
117 information shall be required upon entry of an order or within
118 five (5) days of a change of address.

119 (6) In any case subsequently enforced by the Department of
120 Human Services pursuant to Title IV-D of the Social Security Act,
121 the court shall have continuing jurisdiction.

122 (7) In any subsequent child support enforcement action
123 between the parties, upon sufficient showing that diligent effort
124 has been made to ascertain the location of a party, due process



125 requirements for notice and service of process shall be deemed to
126 be met with respect to the party upon delivery of written notice
127 to the most recent residential or employer address filed with the
128 state case registry.

129 (8) (a) The duty of support of a child terminates upon the
130 emancipation of the child. Unless otherwise provided for in the
131 underlying child support judgment, emancipation shall occur when
132 the child:

133 (i) Attains the age of twenty-one (21) years, or

134 (ii) Marries, or

135 (iii) Joins the military and serves on a full-time
136 basis, or

137 (iv) Is convicted of a felony and is sentenced to
138 incarceration of two (2) or more years for committing such
139 felony * * *.

140 (b) Unless otherwise provided for in the underlying
141 child support judgment, the court may determine that emancipation
142 has occurred and no other support obligation exists when the
143 child:

144 (i) Discontinues full-time enrollment in school
145 having attained the age of eighteen (18) years, unless the child
146 is disabled, or

147 (ii) Voluntarily moves from the home of the
148 custodial parent or guardian, establishes independent living
149 arrangements, obtains full-time employment and discontinues



150 educational endeavors prior to attaining the age of twenty-one
151 (21) years, or

152 (iii) Cohabits with another person without the
153 approval of the parent obligated to pay support * * *.

154 (c) The duty of support of a child who is incarcerated
155 but not emancipated shall be suspended for the period of the
156 child's incarceration.

157 (d) Overdue child support shall remain payable to the
158 custodial parent or guardian after the emancipation of a child
159 unless the court affirmatively determines otherwise.

160 (9) A determination of emancipation does not terminate any
161 obligation of the noncustodial parent to satisfy arrearage
162 existing as of the date of emancipation; the total amount of
163 periodic support due prior to the emancipation plus any periodic
164 amounts ordered paid toward the arrearage shall continue to be
165 owed until satisfaction of the arrearage in full, in addition to
166 the right of the person for whom the obligation is owed to execute
167 for collection as may be provided by law.

168 (10) Upon motion of a party requesting temporary child
169 support pending a determination of parentage, temporary support
170 shall be ordered if there is clear and convincing evidence of
171 paternity on the basis of genetic tests or other evidence, unless
172 the court makes written findings of fact on the record that the
173 award of temporary support would be unjust or inappropriate in a
174 particular case.



175 (11) Custody and visitation upon military temporary duty,
176 deployment or mobilization shall be governed by Section 93-5-34.

177 **SECTION 2.** Section 93-11-103, Mississippi Code of 1972, is
178 amended as follows:

179 93-11-103. (1) Upon entry of any order for support by a
180 court of this state where the custodial parent is a recipient of
181 services under Title IV-D of the federal Social Security Act,
182 issued on or after October 1, 1996, the court entering such order
183 shall enter a separate order for withholding which shall take
184 effect immediately without any requirement that the obligor be
185 delinquent in payment. All such orders for support issued prior
186 to October 1, 1996, shall, by operation of law, be amended to
187 conform with the provisions contained herein. All such orders for
188 support issued shall:

189 (a) Contain a provision for monthly income withholding
190 procedures to take effect in the event the obligor becomes
191 delinquent in paying the order for support without further
192 amendment to the order or further action by the court; and

193 (b) Require that the payor withhold any additional
194 amount for delinquency specified in any order if accompanied by an
195 affidavit of accounting, a notarized record of overdue payments,
196 official payment record or an attested judgment for delinquency or
197 contempt. Any person who willfully and knowingly files a false
198 affidavit, record or judgment shall be subject to a fine of not
199 more than One Thousand Dollars (\$1,000.00). The Department of



200 Human Services shall be the designated agency to receive payments
201 made by income withholding in child support orders enforced by the
202 department. All withholding orders shall be on a form as
203 prescribed by the department.

204 (2) Upon entry of any order for support by a court of this
205 state where the custodial parent is not a recipient of services
206 under Title IV-D of the federal Social Security Act, issued or
207 modified or found to be in arrears on or after January 1, 1994,
208 the court entering such order shall enter a separate order for
209 withholding which shall take effect immediately. Such orders
210 shall not be subject to immediate income withholding under this
211 subsection: (a) if one (1) of the parties (i.e., noncustodial or
212 custodial parent) demonstrates, and the court finds, that there is
213 good cause not to require immediate income withholding, or (b) if
214 both parties agree in writing to an alternative arrangement. The
215 Department of Human Services shall be the designated agency to
216 receive payments made by income withholding in all child support
217 orders. Withholding orders shall be on a form as prescribed by
218 the department.

219 (3) If a child support order is issued or modified in the
220 state but is not subject to immediate income withholding, it
221 automatically becomes so if the court finds that a support payment
222 is thirty (30) days past due. If the support order was issued or
223 modified in another state but is not subject to immediate income
224 withholding, it becomes subject to immediate income withholding on



225 the date on which child support payments are at least thirty (30)
226 days in arrears, or (a) the date as of which the noncustodial
227 parent requests that withholding begin, (b) the date as of which
228 the custodial parent requests that withholding begin, or (c) an
229 earlier date chosen by the court, whichever is earlier.

230 (4) The clerk of the court shall submit copies of such
231 orders to the obligor's payor, any additional or subsequent payor,
232 and to the Mississippi Department of Human Services Case Registry.
233 The clerk of the court, the obligee's attorney, or the department
234 may serve such immediate order for withholding by first-class mail
235 or personal delivery on the obligor's payor, superintendent,
236 manager, agent or subsequent payor, as the case may be. There
237 shall be no need for further notice, hearing, order, process or
238 procedure before service of said order on the payor or any
239 additional or subsequent payor. The obligor may contest, if
240 grounds exist, service of the order of withholding on additional
241 or subsequent payors, by filing an action with the issuing court.
242 Such filing shall not stay the obligor's duty to support pending
243 judicial determination of the obligor's claim. Nothing herein
244 shall be construed to restrict the authority of the courts of this
245 state from entering any order it deems appropriate to protect the
246 rights of any parties involved.

247 (5) The order for withholding shall:

248 (a) Direct any payor to withhold an amount equal to the
249 order for current support;



250 (b) Direct any payor to withhold an additional amount,
251 not less than fifteen percent (15%) of the order for support,
252 until payment in full of any delinquency; and

253 (c) Direct the payor not to withhold in excess of the
254 amounts allowed under Section 303(b) of the Consumer Credit
255 Protection Act, being 15 USCS 1673, as amended.

256 (6) All orders for withholding may permit the Department of
257 Human Services to withhold through said withholding order
258 additional amounts to recover costs incurred through its efforts
259 to secure the support order, including, but not limited to, all
260 filing fees, court costs, service of process fees, mailing costs,
261 birth certificate certification fee, genetic testing fees, the
262 department's attorney's fees; and, in cases where the state or any
263 of its entities or divisions have provided medical services to the
264 child or the child's mother, all medical costs of prenatal care,
265 birthing, postnatal care and any other medical expenses incurred
266 by the child or by the mother as a consequence of her pregnancy or
267 delivery.

268 (7) At the time the order for withholding is entered, the
269 clerk of the court shall provide copies of the order for
270 withholding and the order for support to the obligor, which shall
271 be accompanied by a statement of the rights, remedies and duties
272 of the obligor under Sections 93-11-101 through 93-11-119. The
273 clerk of the court shall make copies available to the obligee and
274 to the department or its local attorney.



275 (8) The order for withholding shall remain in effect for as
276 long as the order for support upon which it is based.

277 (9) The failure of an order for withholding to state an
278 arrearage is not conclusive of the issue of whether an arrearage
279 is owing.

280 (10) Any order for withholding entered pursuant to this
281 section shall not be considered a garnishment.

282 (11) All existing orders for support shall become subject to
283 additional withholding if arrearages occur, subject to court
284 hearing and order. The Department of Human Services or the
285 obligee or his agent or attorney must send to each delinquent
286 obligor notice that:

287 (a) The withholding on the delinquency has commenced;

288 (b) The information along with the required affidavit
289 of accounting, notarized record of overdue payment or attested
290 judgment of delinquency or contempt has been sent to the employer;
291 and

292 (c) The obligor may file an action with the issuing
293 court on the grounds of mistake of fact. Such filing must be made
294 within thirty (30) days of receipt of the notice and shall not
295 stay the obligor's duty to support pending judicial determination
296 of the obligor's claim.

297 (12) An employer who complies with an income withholding
298 notice that is regular on its face and which is accompanied by the
299 required accounting affidavit, notarized record of overdue



300 payments or attested judgment of delinquency or contempt shall not
301 be subject to civil liability to any individual or agency for
302 conduct in compliance with the notice.

303 (13) Any employer who has been served with an order for
304 withholding under this section, which includes a provision for
305 payment of arrears, shall notify the Department of Human Services
306 before making any lump-sum payment of more than Five Hundred
307 Dollars (\$500.00) to the obligor.

308 An employer to whom this section applies shall notify the
309 Department of Human Services of its intention to make a lump-sum
310 payment at least forty-five (45) days before the planned date of
311 the lump-sum payment, or as soon as the decision is made to make
312 the payment, should that be less than forty-five (45) days. The
313 employer shall not release the lump sum to the obligor until
314 thirty (30) days after the intended date of the payment or until
315 authorization is received from the Department of Human Services,
316 whichever is earlier.

317 Upon receipt of notice to pay a lump sum from an employer,
318 the Department of Human Services shall provide the employer with a
319 Notice of Lien in accordance with Section 93-11-71 specifying the
320 amount of the lump sum to be withheld for payment of child support
321 arrearage. * * * The amount withheld from the lump sum for child
322 support arrearages may not exceed an amount equal to the amount
323 the employer would have withheld if the * * * lump sum had been
324 paid as the employee's usual earnings.



325 **SECTION 3.** Section 93-11-111, Mississippi Code of 1972, is
326 amended as follows:

327 93-11-111. (1) It shall be the duty of any payor who has
328 been served with a copy of the order for withholding and an
329 attached affidavit of accounting, a certified record of payments,
330 or judgment for delinquency to deduct and pay over income as
331 provided in this section. The payor shall deduct the amount
332 designated in the order for withholding beginning with the next
333 payment of income that is payable to the obligor after fourteen
334 (14) days following service of the order and notice. The payor
335 shall pay the amounts withheld to the department within seven (7)
336 days of the date the obligor is paid in accordance with the order
337 for withholding and in accordance with any later notification
338 received redirecting payments. The department shall then forward
339 those amounts to the obligee.

340 (2) For * * * intrastate withholding of income, the payor
341 shall be entitled to receive a fee of Two Dollars (\$2.00) * * *
342 for each pay period from which income is withheld, regardless of
343 the number of payments the payor makes to the department. The fee
344 shall be withheld from the income of the obligor in addition to
345 the support payments. However, in all interstate withholding, the
346 rules and laws of the state where the obligor works shall
347 determine the payor's processing fee.

348 (3) The payor shall, unless otherwise notified by the
349 department, withhold from the income of the obligor and forward to



350 the department each month, an amount specified by the department
351 not to exceed Fifteen Dollars (\$15.00) per month to defray the
352 department's administrative costs incurred in receiving and
353 distributing money withheld under Sections 93-11-101 through
354 93-11-119. The payor may pay such amount to the department in any
355 manner determined by the payor to be convenient and may include
356 that amount in checks to the department for amounts withheld
357 pursuant to the order for withholding.

358 (4) Regardless of the amount designated in the order for
359 withholding and regardless of other fees imposed or amounts
360 withheld under this section, the payor shall not deduct from the
361 income of the obligor in excess of the amounts allowed under
362 Section 303(b) of the Consumer Credit Protection Act, being 15
363 USCS 1673, as amended.

364 (5) A payor may combine all amounts that he is required to
365 withhold and pay to the department in one (1) payment; however,
366 the payor must send to the department a list showing the amount of
367 the payment attributable to each obligor.

368 (6) Whenever the obligor is no longer receiving income from
369 the payor, the payor shall return a copy of the order for
370 withholding to the department and shall forward the obligor's last
371 known address and name and address of the obligor's new employer,
372 if known, to the department. The payor shall cooperate in
373 providing further information for the purpose of enforcing
374 Sections 93-11-101 through 93-11-119.



375 (7) Withholding of income under this section shall be made
376 without regard to any prior or subsequent garnishments,
377 attachments, wage assignments or any other claims of creditors.
378 Payment as required by the order for withholding shall be a
379 complete defense by the payor against any claims of the obligor or
380 his creditors as to the sum so paid.

381 (8) In cases in which the payor has been served more than
382 one (1) order for withholding for the same obligor, the payor
383 shall honor the orders on a pro rata basis to result in
384 withholding an amount for each order that is in direct proportion
385 to the percentage of the obligor's adjusted gross income that the
386 order represents, and the payor shall honor all those withholdings
387 to the extent that the total amount withheld does not exceed the
388 maximum amount specified in subsection (1) of this section.

389 (9) No payor shall discharge, discipline, refuse to hire or
390 otherwise penalize any obligor because of the duty to withhold
391 income.

392 **SECTION 4.** This act shall take effect and be in force from
393 and after July 1, 2018.

