

By: Senator(s) Wiggins, Thompson

To: Judiciary, Division A

SENATE BILL NO. 2262

1 AN ACT TO AMEND SECTION 43-19-34, MISSISSIPPI CODE OF 1972,
2 TO PROVIDE THAT A MODIFICATION TO AN ORDER OF SUPPORT FOR MINOR
3 CHILDREN MAY BE RETROACTIVE ONLY BACK TO THE DATE OF FILING THE
4 PETITION TO MODIFY IN ORDER TO MIRROR CURRENT AGENCY POLICY AND
5 FEDERAL LAW; AND FOR RELATED PURPOSES.

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

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

9 43-19-34. (1) In lieu of legal proceedings instituted to
10 obtain a modification for an order for support, a written
11 stipulated agreement for modification executed by the responsible
12 parent when acknowledged before a clerk of the court having
13 jurisdiction over those matters or a notary public and filed with
14 and approved by the judge of that court shall have the same force
15 and effect, retroactively and prospectively, in accordance with
16 the terms of the agreement as an order for modification of support
17 entered by the court, and shall be enforceable and subject to
18 later modification in the same manner as is provided by law for
19 orders of the court in those cases.



20 (2) With respect to a child support order in cases initiated
21 or enforced by the Department of Human Services under Title IV-D
22 of the Social Security Act, in which the department has determined
23 that a modification is appropriate, the department shall send a
24 motion and notice of intent to modify the order, together with the
25 proposed modification of the order under this section to the last
26 known mailing address of the defendant. The notice shall specify
27 the date and time certain of the hearing and shall be sent by
28 certified mail, restricted delivery, return receipt requested;
29 notice shall be deemed complete as of the date of delivery as
30 evidenced by the return receipt. The required notice may also be
31 delivered by personal service in accordance with Rule 4 of the
32 Mississippi Rules of Civil Procedure insofar as it may be applied
33 to service of an administrative order or notice. The defendant
34 may accept the proposed modification by signing and returning it
35 to the department before the date of hearing for presentation to
36 the court for approval. If the defendant does not sign and return
37 the proposed modification, the court shall on the date and time
38 previously set for hearing review the proposal and make a
39 determination as to whether it should be approved, in whole or in
40 part.

41 (3) Every three (3) years, the Department of Human Services
42 shall notify both parents of their right to request a review, and
43 upon the request of either parent, or if there is an assignment
44 under Section 43-19-35, the department, after a review and



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

62 (4) Any order for the support of minor children, whether
63 entered through the judicial system or through an expedited
64 process, shall not be subject to a downward retroactive
65 modification. * * * A modification may be * * * retroactive only
66 back to the date of * * * filing the petition to modify.

67 (5) If a downward modification is determined to be warranted
68 under the guidelines contained in subsection (3), the noncustodial



69 parent's arrearage, if any, shall not be a basis for contesting
70 the downward modification in any later legal proceedings.

71 **SECTION 2.** This act shall take effect and be in force from
72 and after its passage.

