

By: Senator(s) Nunnelee

To: Judiciary

SENATE BILL NO. 2734

1 AN ACT TO AMEND SECTION 93-11-105, MISSISSIPPI CODE OF 1972,
 2 TO PROVIDE AN ALTERNATIVE MEANS BY WHICH CUSTODIAL PARENTS MAY
 3 SECURE CHILD SUPPORT; TO AMEND SECTION 93-11-71, MISSISSIPPI CODE
 4 OF 1972, TO STRENGTHEN THE MEANS BY WHICH PARENTS MAY BE HELD IN
 5 CONTEMPT OF COURT AND JAILED FOR FAILURE TO PAY CHILD SUPPORT; TO
 6 AMEND SECTION 93-5-23, MISSISSIPPI CODE OF 1972, TO FORCE JUDGES
 7 TO CONSIDER THE BEST INTERESTS OF THE CHILD OR CHILDREN IN A
 8 DIVORCE; AND FOR RELATED PURPOSES.

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

10 **SECTION 1.** Section 93-11-105, Mississippi Code of 1972, is
 11 amended as follows:

12 93-11-105. (1) Notwithstanding the provisions of Section
 13 93-11-103, the Department of Human Services shall be authorized to
 14 implement administrative orders for withholding without the
 15 necessity of obtaining an order through judicial proceedings. The
 16 administrative order for withholding shall be implemented pursuant
 17 to a previously rendered order for support and shall be on a form
 18 prescribed by the Department of Human Services. Unless
 19 inconsistent with the provisions of this section, the order for
 20 withholding shall be subject to the same requirements as provided
 21 in Sections 93-11-101 through 93-11-118.

22 (2) The administrative order shall be filed with the clerk
 23 by the department and a copy shall be transmitted to the obligor
 24 by regular mail to the last known address of the obligor.

25 (3) The order for withholding shall:

26 (a) Direct any payor to withhold an amount equal to the
 27 order for the current support obligation;

28 (b) Direct any payor to withhold an additional amount
 29 equal to twenty percent (20%) of the current support obligation,



30 unless a different amount has been previously ordered by the
31 court, until payment in full of any delinquency; and

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

35 (4) Any parent who is owed child support may go to any
36 chancery or circuit court in the state and provide the name of the
37 offending child support parent, along with the offending parent's
38 work and home addresses, sign an affidavit stating the above and
39 the clerk shall immediately have the affidavit signed by a judge
40 and send to the workplace of the offending parent for garnishment
41 of wages. Child support shall be sent the Child Support Unit of
42 the Department of Human Services and handled as other child
43 support and paid to the custodial parent.

44 **SECTION 2.** Section 93-11-71, Mississippi Code of 1972, is
45 amended as follows:

46 93-11-71. (1) Whenever a court orders any person to make
47 periodic payments of a sum certain for the maintenance or support
48 of a child, and whenever such payments as have become due remain
49 unpaid for a period of at least thirty (30) days, a judgment by
50 operation of law shall arise against the obligor in an amount
51 equal to all payments which are then due and owing. The parent
52 shall also be ordered in contempt of court and taken to jail
53 immediately to show cause. If without very sufficient cause, the
54 parent shall be fined One Thousand Dollars (\$1,000.00) on the
55 first offense, Five Thousand Dollars (\$5,000.00) for each second
56 or subsequent offense, and remain in jail until the parent has
57 provided the court a sufficient plan of action to support the
58 child. The court shall order a portion of the fine to be paid to
59 the custodial parent.

60 (a) A judgment arising under this section shall have
61 the same effect and be fully enforceable as any other judgment



62 entered in this state. A judicial or administrative action to
63 enforce said judgment may be commenced at any time; and

64 (b) Such judgments arising in other states by operation
65 of law shall be given full faith and credit in this state.

66 (2) Any judgment arising under the provisions of this
67 section shall operate as a lien upon all the property of the
68 judgment debtor, both real and personal, which lien shall be
69 perfected as to third parties without actual notice thereof only
70 upon enrollment on the judgment roll. The department or attorney
71 representing the party to whom support is owed shall furnish an
72 abstract of the judgment for periodic payments for the maintenance
73 and support of a child, along with sworn documentation of the
74 delinquent child support, to the circuit clerk of the county where
75 the judgment is rendered, and it shall be the duty of the circuit
76 clerk to enroll the judgment on the judgment roll. Liens arising
77 under the provisions of this section may be executed upon and
78 enforced in the same manner and to the same extent as any other
79 judgment.

80 (3) Notwithstanding the provisions in paragraph (2), any
81 judgment arising under the provisions of this section shall
82 subject the following assets to interception or seizure without
83 regard to the entry of the judgment on the judgment roll of the
84 situs district or jurisdiction:

85 (a) Periodic or lump-sum payments from a federal, state
86 or local agency, including unemployment compensation, workers'
87 compensation and other benefits;

88 (b) Winnings from lotteries and gaming winnings which
89 are received in periodic payments made over a period in excess of
90 thirty (30) days;

91 (c) Assets held in financial institutions;

92 (d) Settlements and awards resulting from civil
93 actions; and



94 (e) Public and private retirement funds, only to the
95 extent that the obligor is qualified to receive and receives a
96 lump sum or periodic distribution from the funds.

97 (4) In any case in which a child receives assistance from
98 block grants for Temporary Assistance for Needy Families (TANF),
99 and the obligor owes past-due child support, the obligor, if not
100 incapacitated, may be required by the court to participate in any
101 work programs offered by any state agency.

102 **SECTION 3.** Section 93-5-23, Mississippi Code of 1972, is
103 amended as follows:

104 93-5-23. When a divorce shall be decreed from the bonds of
105 matrimony, the court may, in its discretion, having regard to the
106 circumstances of the parties and the nature of the case, as may
107 seem equitable and just, make all orders touching the care,
108 custody and maintenance of the children of the marriage, and also
109 touching the maintenance and alimony of the wife or the husband,
110 or any allowance to be made to her or him, and shall, if need be,
111 require bond, sureties or other guarantee for the payment of the
112 sum so allowed. Orders touching on the custody of the children of
113 the marriage shall be made in accordance with the provisions of
114 Section 93-5-24. Divorce participants with children must show
115 exactly how said children will be taken care, where and by whom
116 daycare will be provided, etc., with a six-month trial period
117 before the petition for divorce will be granted. The divorce
118 petition must be proved to the judge to represent the best
119 interest of the child or children before the judge can grant it.
120 The court may afterwards, on petition, change the decree, and make
121 from time to time such new decrees as the case may require.
122 However, where proof shows that both parents have separate incomes
123 or estates, the court may require that each parent contribute to
124 the support and maintenance of the children of the marriage in
125 proportion to the relative financial ability of each. In the
126 event a legally responsible parent has health insurance available



127 to him or her through an employer or organization that may extend
128 benefits to the dependents of such parent, any order of support
129 issued against such parent may require him or her to exercise the
130 option of additional coverage in favor of such children as he or
131 she is legally responsible to support.

132 Whenever the court has ordered a party to make periodic
133 payments for the maintenance or support of a child, but no bond,
134 sureties or other guarantee has been required to secure such
135 payments, and whenever such payments as have become due remain
136 unpaid for a period of at least thirty (30) days, the court may,
137 upon petition of the person to whom such payments are owing, or
138 such person's legal representative, enter an order requiring that
139 bond, sureties or other security be given by the person obligated
140 to make such payments, the amount and sufficiency of which shall
141 be approved by the court. The obligor shall, as in other civil
142 actions, be served with process and shall be entitled to a hearing
143 in such case.

144 Whenever in any proceeding in the chancery court concerning
145 the custody of a child a party alleges that the child whose
146 custody is at issue has been the victim of sexual or physical
147 abuse by the other party, the court may, on its own motion, grant
148 a continuance in the custody proceeding only until such allegation
149 has been investigated by the Department of Human Services. At the
150 time of ordering such continuance the court may direct the party,
151 and his attorney, making such allegation of child abuse to report
152 in writing and provide all evidence touching on the allegation of
153 abuse to the Department of Human Services. The Department of
154 Human Services shall investigate such allegation and take such
155 action as it deems appropriate and as provided in such cases under
156 the Youth Court Law (being Chapter 21 of Title 43, Mississippi
157 Code of 1972) or under the laws establishing family courts (being
158 Chapter 23 of Title 43, Mississippi Code of 1972).



159 If after investigation by the Department of Human Services or
160 final disposition by the youth court or family court allegations
161 of child abuse are found to be without foundation, the chancery
162 court shall order the alleging party to pay all court costs and
163 reasonable attorney's fees incurred by the defending party in
164 responding to such allegation.

165 The court may investigate, hear and make a determination in a
166 custody action when a charge of abuse and/or neglect arises in the
167 course of a custody action as provided in Section 43-21-151, and
168 in such cases the court shall appoint a guardian ad litem for the
169 child as provided under Section 43-21-121, who shall be an
170 attorney. Unless the chancery court's jurisdiction has been
171 terminated, all disposition orders in such cases for placement
172 with the Department of Human Services shall be reviewed by the
173 court or designated authority at least annually to determine if
174 continued placement with the department is in the best interest of
175 the child or public.

176 The duty of support of a child terminates upon the
177 emancipation of the child. The court may determine that
178 emancipation has occurred and no other support obligation exists
179 when the child:

180 (a) Attains the age of twenty-one (21) years, or

181 (b) Marries, or

182 (c) Discontinues full-time enrollment in school and
183 obtains full-time employment prior to attaining the age of
184 twenty-one (21) years, or

185 (d) Voluntarily moves from the home of the custodial
186 parent or guardian and establishes independent living arrangements
187 and obtains full-time employment prior to attaining the age of
188 twenty-one (21) years.

189 **SECTION 4.** This act shall take effect and be in force from
190 and after July 1, 2002.

