

By: Representatives Holloway, Gibbs,
Middleton, Whittington

To: Judiciary A

HOUSE BILL NO. 1028

1 AN ACT TO AMEND SECTION 11-35-23, MISSISSIPPI CODE OF 1972,
2 TO PROVIDE THAT All PAYMENTS MADE PURSUANT TO A GARNISHMENT ISSUED
3 OUT OF THE JUSTICE COURT SHALL BE MADE DIRECTLY TO THE PLAINTIFF
4 OR TO THE PLAINTIFF'S ATTORNEY AS INDICATED BY THE PLAINTIFF IN
5 HIS OR HER SUGGESTION FOR WRIT OF GARNISHMENT; AND FOR RELATED
6 PURPOSES.

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

8 **SECTION 1.** Section 11-35-23, Mississippi Code of 1972, is
9 amended as follows:

10 11-35-23. (1) Except for wages, salary or other
11 compensation, all property in the hands of the garnishee belonging
12 to the defendant at the time of the service of the writ of
13 garnishment shall be bound by and subject to the lien of the
14 judgment, decree or attachment on which the writ shall have been
15 issued. If the garnishee shall surrender such property to the
16 sheriff or other officer serving the writ, the officer shall
17 receive the same and, in case the garnishment issued on a judgment
18 or decree, shall make sale thereof as if levied on by virtue of an
19 execution, and return the money arising therefrom to satisfy the
20 judgment; and if the garnishment issued on an attachment, the
21 officer shall dispose of the property as if it were levied upon by
22 a writ of attachment. And any indebtedness of the garnishee to
23 the defendant, except for wages, salary or other compensation,
24 shall be bound from the time of the service of the writ of
25 garnishment, and be appropriable to the satisfaction of the
26 judgment or decree, or liable to be condemned in the attachment.

27 (2) The court issuing any writ of garnishment shall show
28 thereon the amount of the claim of the plaintiff and the court
29 costs in the proceedings and should at any time during the



30 pendency of said proceedings in the court a judgment be rendered
31 for a different amount, then the court shall notify the garnishee
32 of the correct amount due by the defendant under said writ.

33 (3) (a) Except for judgments, liens, attachments, fees or
34 charges owed to the state or its political subdivisions; wages,
35 salary or other compensation in the hands of the garnishee
36 belonging to the defendant at the time of the service of the writ
37 of garnishment shall not be bound by nor subject to the lien of
38 the judgment, decree or attachment on which the writ shall have
39 been issued when the writ of garnishment is issued on a judgment
40 based upon a claim or debt that is less than One Hundred Dollars
41 (\$100.00), excluding court costs.

42 (b) If the garnishee be indebted or shall become
43 indebted to the defendant for wages, salary or other compensation
44 during the first thirty (30) days after service of a proper writ
45 of garnishment, the garnishee shall pay over to the employee all
46 of such indebtedness, and thereafter, the garnishee shall retain
47 and the writ shall bind the nonexempt percentage of disposable
48 earnings, as provided by Section 85-3-4, for such period of time
49 as is necessary to accumulate a sum equal to the amount shown on
50 the writ as due the court, even if such period of time extends
51 beyond the return day of the writ. Unless the court otherwise
52 authorizes the garnishee to make earlier payments or releases, the
53 garnishee shall retain all sums collected pursuant to the writ and
54 make only one (1) payment into court at such time as the total
55 amount shown due on the writ has been accumulated, provided that,
56 at least one (1) payment per year shall be made to the court of
57 the amount that has been withheld during the preceding year.
58 Should the employment of the defendant for any reason be
59 terminated with the garnishee, then the garnishee shall not later
60 than fifteen (15) days after the termination of such employment,
61 report such termination to the court and pay into the court all
62 sums as have been withheld from the defendant's disposable



63 earnings. If the plaintiff in garnishment contest the answer of
64 the garnishee, as now provided by law in such cases, and proves to
65 the court the deficiency or untruth of the garnishee's answer,
66 then the court shall render judgment against the garnishee for
67 such amount as would have been subject to the writ had the said
68 sum not been released to the defendant; provided, however, any
69 garnishee who files a timely and complete answer shall not be
70 liable for any error made in good faith in determining or
71 withholding the amount of wages, salary or other compensation of a
72 defendant which are subject to the writ.

73 (4) Wages, salaries or other compensation as used in this
74 section shall mean wages, salaries, commissions, bonuses or other
75 compensation paid for employment purposes only.

76 (5) The circuit clerk may, in his or her discretion, spread
77 on the minutes of the county or circuit court, as the case may be,
78 an instruction that all garnishment defendants shall send all
79 garnishment monies to the attorney of record or in the case where
80 there is more than one (1) attorney of record, then to the
81 first-named attorney of record, and not to the clerk. The payment
82 schedule shall be the same as subsection (3)(b) of this section.

83 (6) All payments made pursuant to a garnishment issued out
84 of the Justice Court shall be made directly to the plaintiff or to
85 the plaintiff's attorney as indicated by the plaintiff in his or
86 her suggestion for writ of garnishment.

87 **SECTION 2.** This act shall take effect and be in force from
88 and after July 1, 2003.

