

By: Senator(s) Williamson

To: Public Health and Welfare

SENATE BILL NO. 2725

1 AN ACT TO AMEND SECTIONS 43-1-2, 43-19-31, 43-19-34,
 2 43-19-35, 43-19-37, 43-19-44, 43-19-46, 43-19-47, 43-19-48,
 3 43-19-49, 43-19-53, 43-19-55, 43-19-57, 43-19-58 AND 43-19-59,
 4 MISSISSIPPI CODE OF 1972, TO TRANSFER THE POWERS AND
 5 RESPONSIBILITIES OF THE CHILD SUPPORT UNIT OF THE STATE DEPARTMENT
 6 OF HUMAN SERVICES TO THE CHILD SUPPORT UNIT OF THE OFFICE OF
 7 ATTORNEY GENERAL AND TO PROVIDE FOR A DIRECTOR THEREOF; AND FOR
 8 RELATED PURPOSES.

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

10 **SECTION 1.** Section 43-1-2, Mississippi Code of 1972, is
 11 amended as follows:

12 43-1-2. (1) There is created the Mississippi Department of
 13 Human Services, whose offices shall be located in Jackson,
 14 Mississippi, and which shall be under the policy direction of the
 15 Governor.

16 (2) The chief administrative officer of the department shall
 17 be the Executive Director of Human Services. The Governor shall
 18 appoint the Executive Director of Human Services with the advice
 19 and consent of the Senate, and he shall serve at the will and
 20 pleasure of the Governor, and until his successor is appointed and
 21 qualified. The Executive Director of Human Services shall possess
 22 the following qualifications:

23 (a) A bachelor's degree from an accredited institution
 24 of higher learning and ten (10) years' experience in management,
 25 public administration, finance or accounting; or

26 (b) A master's or doctoral degree from an accredited
 27 institution of higher learning and five (5) years' experience in
 28 management, public administration, finance or accounting.

29 Those qualifications shall be certified by the State
 30 Personnel Board.

31 (3) There shall be a Joint Oversight Committee of the
32 Department of Human Services composed of the respective chairmen
33 of the Senate Public Health and Welfare Committee, the Senate
34 Appropriations Committee, the House Public Health and Welfare
35 Committee and the House Appropriations Committee, two (2) members
36 of the Senate appointed by the Lieutenant Governor to serve at the
37 will and pleasure of the Lieutenant Governor, and two (2) members
38 of the House of Representatives appointed by the Speaker of the
39 House to serve at the will and pleasure of the Speaker. The
40 chairmanship of the committee shall alternate for twelve-month
41 periods between the Senate members and the House members, with the
42 Chairman of the Senate Public Health and Welfare Committee serving
43 as the first chairman. The committee shall meet once each month,
44 or upon the call of the chairman at such times as he deems
45 necessary or advisable, and may make recommendations to the
46 Legislature pertaining to any matter within the jurisdiction of
47 the Mississippi Department of Human Services. The appointing
48 authorities may designate an alternate member from their
49 respective houses to serve when the regular designee is unable to
50 attend such meetings of the oversight committee. For attending
51 meetings of the oversight committee, such legislators shall
52 receive per diem and expenses which shall be paid from the
53 contingent expense funds of their respective houses in the same
54 amounts as provided for committee meetings when the Legislature is
55 not in session; however, no per diem and expenses for attending
56 meetings of the committee will be paid while the Legislature is in
57 session. No per diem and expenses will be paid except for
58 attending meetings of the oversight committee without prior
59 approval of the proper committee in their respective houses.

60 (4) The State Department of Human Services shall provide the
61 services authorized by law to every individual determined to be
62 eligible therefor, and in carrying out the purposes of the
63 department, the executive director is authorized:

64 (a) To formulate the policy of the department regarding
65 human services within the jurisdiction of the department;

66 (b) To adopt, modify, repeal and promulgate, after due
67 notice and hearing, and where not otherwise prohibited by federal
68 or state law, to make exceptions to and grant exemptions and
69 variances from, and to enforce rules and regulations implementing
70 or effectuating the powers and duties of the department under any
71 and all statutes within the department's jurisdiction, all of
72 which shall be binding upon the county departments of human
73 services;

74 (c) To apply for, receive and expend any federal or
75 state funds or contributions, gifts, devises, bequests or funds
76 from any other source;

77 (d) Except as limited by Section 43-1-3, to enter into
78 and execute contracts, grants and cooperative agreements with any
79 federal or state agency or subdivision thereof, or any public or
80 private institution located inside or outside the State of
81 Mississippi, or any person, corporation or association in
82 connection with carrying out the programs of the department; and

83 (e) To discharge such other duties, responsibilities
84 and powers as are necessary to implement the programs of the
85 department.

86 (5) The executive director shall establish the
87 organizational structure of the Mississippi Department of Human
88 Services which shall include the creation of any units necessary
89 to implement the duties assigned to the department and consistent
90 with specific requirements of law, including, but not limited to:

91 (a) Office of Family and Children's Services;

92 (b) Office of Youth Services;

93 (c) Office of Economic Assistance.

94 * * *

95 (6) The Executive Director of Human Services shall appoint
96 heads of offices, bureaus and divisions, as defined in Section

97 7-17-11, who shall serve at the pleasure of the executive
98 director. The salary and compensation of such office, bureau and
99 division heads shall be subject to the rules and regulations
100 adopted and promulgated by the State Personnel Board as created
101 under Section 25-9-101 et seq. The executive director shall have
102 the authority to organize offices as deemed appropriate to carry
103 out the responsibilities of the department. The organization
104 charts of the department shall be presented annually with the
105 budget request of the Governor for review by the Legislature.

106 (7) This section shall stand repealed on July 1, 2006.

107 **SECTION 2.** Section 43-19-31, Mississippi Code of 1972, is
108 amended as follows:

109 43-19-31. (1) The Office of the Attorney General is
110 designated as the state's Title IV-D agency. On July 1, 2005, the
111 Child Support Unit of the Department of Human Services shall be
112 transferred to the Office of the Attorney General. Wherever the
113 term "Child Support Unit" appears in any law, the same shall mean
114 the Child Support Unit of the Office of Attorney General. The
115 Attorney General may assign to the appropriate offices such powers
116 and duties deemed appropriate to carry out the lawful functions of
117 the Child Support Unit. The person appointed by the Attorney
118 General as the person responsible for managing the Title IV-D
119 agency's child support enforcement duties shall report directly to
120 the Attorney General. Appropriations made to the Title IV-D
121 agency for child support enforcement may be expended only for the
122 purposes for which the money was appropriated.

123 (2) An attorney employed to provide Title IV-D services
124 represents the interest of the state and not the interest of any
125 other party. The provision of services by an attorney under this
126 chapter does not create an attorney-client relationship between
127 the attorney and any other party. The agency shall, at the time
128 an application for child support services is made, inform the
129 applicant that neither the Title IV-D agency nor any attorney who

130 provides services under this chapter is the applicant's attorney
131 and that the attorney providing services under this chapter does
132 not provide legal representation to the applicant. An attorney
133 employed by the Title IV-D agency or as otherwise provided by this
134 chapter may not be appointed or act as a guardian ad litem or
135 attorney ad litem for a child or another party. A court shall not
136 disqualify the Title IV-D agency in a legal action filed under
137 this chapter or Part D of Title IV of the federal Social Security
138 Act on the basis that the agency has previously provided services
139 to a party whose interests may now be adverse to the relief
140 requested.

141 (3) The Office of Attorney General is hereby authorized and
142 empowered to establish a single and separate Child Support Unit
143 for the following purposes:

144 (a) To develop and implement a nonsupport and paternity
145 program and institute proceedings in the name of the Child Support
146 Unit of the Office of Attorney General or in the name of the
147 recipient in any court of competent jurisdiction in any county
148 where the mother of the child resides or is found, in the county
149 where the father resides or is found, or in the county where the
150 child resides or is found;

151 (b) To secure and collect support by any method
152 authorized under state law and establish paternity for any child
153 or children receiving aid from the Department of Human Services
154 any form of public assistance, including, but not limited to,
155 medical assistance, foster care, food stamps, TANF, or any other
156 program under the federal Social Security Act, from a parent or
157 any other person legally liable for such support who has either
158 failed or refused to provide support, deserted, neglected or
159 abandoned the child or children, including cooperating with other
160 states in establishing paternity, locating absent parents and
161 securing compliance with court orders for support of Temporary
162 Assistance for Needy Families (TANF) children; the Child Support

163 Unit may petition the court for the inclusion of health insurance
164 as part of any child support order on behalf of any child
165 receiving aid from the Department of Human Services unless good
166 cause for noncooperation, as defined by the Social Security Act or
167 the Child Support Unit, is established. Unless notified to the
168 contrary, whenever a child or children for whom child support
169 services have been provided ceases to receive public assistance,
170 the Child Support Unit will continue to provide services and
171 establish paternity, secure and collect such support payments from
172 a parent or any other person legally liable for such support in
173 accordance with the standards prescribed pursuant to the federal
174 Social Security Act;

175 (c) To accept applications for child support
176 enforcement services to establish paternity, secure and collect
177 support from any proper party or person as defined by Title IV-D
178 of the federal Social Security Act notwithstanding the fact that
179 the child or children do not currently receive or have never
180 received public assistance. The Child Support Unit shall have the
181 authority to secure and collect support by any method authorized
182 under state law and establish paternity for any child or children
183 on behalf of a recipient of child support services, including
184 individuals who do not currently receive or have never received
185 public assistance from a parent or any other person legally liable
186 for such support who has either failed or refused to provide
187 support, deserted, neglected or abandoned the child or children,
188 including cooperating with other states in establishing paternity,
189 locating absent parents and securing compliance with court orders
190 for support; the Child Support Unit may petition the court for the
191 inclusion of health insurance as part of any child support order
192 on behalf of such recipients of child support services. The
193 proceeds of any collections resulting from such application shall
194 be distributed in accordance with the standards prescribed in the
195 federal Social Security Act;

196 (d) The Child Support Unit shall seek to recover from
197 the individual who owes a support obligation to any individual who
198 is a recipient of Title IV-D services as set forth in paragraph
199 (b) or (c) on whose behalf the Child Support Unit is providing
200 services, upon judicial proceedings conducted thereon after
201 advance notice to such obligor, reasonable attorney's fees and
202 court costs, in excess of any administrative fees collected and in
203 excess of amounts of current support owed by the obligor, which
204 the Child Support Unit incurs in recovering and collecting the
205 support obligation, such costs and fees as the Child Support Unit
206 recovers to be deposited in the Special Fund of the Child Support
207 Unit of the Office of Attorney General which is hereby established
208 for the pursuit and collection of child support;

209 (e) To initiate contempt of court proceedings or any
210 other remedial proceedings necessary to enforce (i) any order or
211 decree of court relating to child support, and (ii) any order or
212 decree of court relating to the maintenance and/or alimony of a
213 parent where support collection services on his or her child's
214 behalf are being provided by the Child Support Unit;

215 (f) To secure and collect by any method authorized
216 under state law any maintenance and/or alimony on behalf of a
217 parent whose child or children's support is being collected by the
218 Child Support Unit. The Child Support Unit shall collect only
219 such maintenance and/or alimony as is ordered or decreed by the
220 court, and only in the event that the minor child and parent to
221 whom such maintenance and/or alimony has been ordered are living
222 in the same household;

223 (g) To obtain restitution of monies expended for public
224 assistance from a parent or any other person legally liable for
225 the support of any child or children receiving aid from the Child
226 Support Unit; said action for restitution shall arise from the
227 payment of public assistance for the dependent child or children
228 and shall be for the amount of the public assistance paid. Said

229 action for restitution shall not arise against the parent or other
230 person legally responsible who receives public assistance for the
231 benefit of any dependent child or children. When a court order of
232 support has been issued, the amount recoverable shall be limited
233 to the amount of the court order;

234 (h) Setting off against a debtor's income tax refund or
235 rebate any debt which is in the form of a liquidated sum due and
236 owing for the care, support or maintenance of a child;

237 (i) To have full responsibility in the aforementioned
238 cases for initiating actions under the Uniform Interstate Family
239 Support Act and for responding to the actions of other
240 jurisdictions under said law when Mississippi is the responding
241 state; however, this shall not impair private litigants' rights to
242 proceed under any applicable interstate enforcement mechanisms;

243 (j) To enter into contracts for the purpose of
244 performing any test which the Child Support Unit may, from time to
245 time, require;

246 (k) To maintain a Central Receipting and Disbursement
247 Unit to which all payments required by withholding orders and
248 orders for support in all actions to which the Child Support Unit
249 is a party shall be forwarded, and from which child support
250 payments ordered by the court in actions to which the Child
251 Support Unit is a party shall be disbursed to the custodial parent
252 or other such party as may be designated by the court order. The
253 Central Receipting and Disbursement Unit shall be operated by the
254 Child Support Unit or any financial institution having operations
255 and qualified to do business in Mississippi, whose deposits are
256 insured by the Federal Deposit Insurance Corporation. The Child
257 Support Unit shall conduct cost-benefit analyses to determine and
258 utilize the more cost efficient manner of operating the unit;

259 (l) To maintain a Child Support Unit of the Office of
260 Attorney General Case Registry containing records with respect to:

261 (i) Each case in which services are being provided
262 by the Child Support Unit under this section; and

263 (ii) Each support order established or modified in
264 Mississippi on or after October 1, 1998; and

265 (iii) The Administrative Office of Courts, as
266 established by Section 9-21-1, Mississippi Code of 1972, in
267 consultation with the Child Support Unit, shall devise, promulgate
268 and require the use of a Uniform Child Support Order Tracking
269 System.

270 1. Information collected from case filing
271 forms shall be furnished to the Child Support Unit of the Office
272 of Attorney General, in order that compliance with court-ordered
273 obligations of support may be tracked with specificity throughout
274 the duration of said obligations and any subsequent proceedings.

275 2. Such tracking system shall include: a.
276 the names, residential and mailing addresses, telephone numbers,
277 social security numbers, driver's license numbers and dates of
278 birth of each child and parent named in or subject to the court
279 order; b. the court cause number of the action; c. name, address
280 and telephone number of employer; d. any restraining or protective
281 order indicating domestic violence; and e. any other information
282 which may be used for the purpose of identifying any person named
283 in or subject to the order or for the purposes of establishing,
284 enforcing or modifying a child support order; and

285 (m) To take administrative actions relating to genetic
286 testing, determine paternity, establish child support orders,
287 modification of child support orders, income withholding, liens
288 and subpoenas without the necessity of obtaining an order from any
289 judicial or other administrative tribunal with respect to cases
290 initiated or enforced by the Child Support Unit pursuant to Title
291 IV-D of the Social Security Act;

292 (n) To have the authority to use high-volume automated
293 administrative enforcement in interstate cases to the same extent

294 as used for intrastate cases, in response to a request made by
295 another state to enforce support orders;

296 (o) To provide any child support enforcement or other
297 service as may be required by the United States of America,
298 Department of Health and Human Services, Family Support
299 Administration, Office of Child Support Enforcement or their
300 successor pursuant to federal law or regulation.

301 **SECTION 3.** Section 43-19-34, Mississippi Code of 1972, is
302 amended as follows:

303 43-19-34. (1) In lieu of legal proceedings instituted to
304 obtain a modification for an order for support, a written
305 stipulated agreement for modification executed by the responsible
306 parent when acknowledged before a clerk of the court having
307 jurisdiction over such matters or a notary public and filed with
308 and approved by the judge of said court shall have the same force
309 and effect, retroactively and prospectively, in accordance with
310 the terms of said agreement as an order for modification of
311 support entered by the court, and shall be enforceable and subject
312 to subsequent modification in the same manner as is provided by
313 law for orders of the court in such cases.

314 (2) With respect to a child support order in cases initiated
315 or enforced by the Child Support Unit pursuant to Title IV-D of
316 the Social Security Act, wherein the Child Support Unit has
317 determined that a modification is appropriate, the Child Support
318 Unit shall send a motion and notice of intent to modify the order,
319 together with the proposed modification of the order under this
320 section to the last known mailing address of the defendant. Such
321 notice shall specify the date and time certain of the hearing and
322 shall be sent by certified mail, restricted delivery, return
323 receipt requested; notice shall be deemed complete as of the date
324 of delivery as evidenced by the return receipt. The required
325 notice may also be delivered by personal service in accordance
326 with Rule 4 of the Mississippi Rules of Civil Procedure insofar as

327 it may be applied to service of an administrative order or notice.
328 The defendant may accept the proposed modification by signing and
329 returning it to the Child Support Unit prior to the date of
330 hearing for presentation to the court for approval. In the event
331 that the defendant does not sign and return the proposed
332 modification, the court shall on the date and time previously set
333 for hearing review the proposal and make a determination as to
334 whether it should be approved in whole or in part.

335 (3) Every three (3) years, upon the request of either
336 parent, or if there is an assignment under Section 43-19-35, upon
337 the request of the Child Support Unit or of either parent, the
338 Child Support Unit shall review and, if appropriate, seek to
339 adjust a support order being enforced under Section 43-19-31 in
340 accordance with the guidelines established pursuant to Section
341 43-19-101, if the amount of the child support award under the
342 order differs from the amount that would be awarded in accordance
343 with the guidelines, taking into account the best interests of the
344 child involved. No proof of a material change in circumstances is
345 necessary in the three-year review for adjustment pursuant to this
346 subsection (3). Proof of a material change in circumstances is
347 necessary for modification outside the three-year cycle.

348 (4) Any order for the support of minor children, whether
349 entered through the judicial system or through an expedited
350 process, shall not be subject to a downward retroactive
351 modification. An upward retroactive modification may be ordered
352 back to the date of the event justifying the upward modification.

353 **SECTION 4.** Section 43-19-35, Mississippi Code of 1972, is
354 amended as follows:

355 43-19-35. (1) By currently or previously accepting public
356 assistance or making application for child support services for
357 and on behalf of a child or children, the recipient shall be
358 deemed to have made an assignment to the Child Support Unit of the
359 Office of Attorney General of any and all rights and interests in

360 any cause of action, past, present or future, that said recipient
361 or the children may have against any parent failing to provide for
362 the support and maintenance of said minor child or children; said
363 Child Support Unit shall be subrogated to any and all rights,
364 title and interest the recipient or the children may have against
365 any and all property belonging to the absent or nonsupporting
366 parent in the enforcement of any claim for child or spousal
367 support, whether liquidated through court order or not. The
368 recipient of Title IV-D services shall also be deemed, without the
369 necessity of signing any document, to have appointed the Child
370 Support Unit of the Office of Attorney General to act in his or
371 her, as well as the children's, name, place, and stead to perform
372 the specific act of instituting suit to establish paternity or
373 secure support, collecting any and all amounts due and owing for
374 child or spousal support or any other service as required or
375 permitted under Title IV-D of the federal Social Security Act, and
376 endorsing any and all drafts, checks, money orders or other
377 negotiable instruments representing child or spousal support
378 payments which are received on behalf of the recipient or the
379 children, and retaining any portion thereof permitted under
380 federal and state statutes as reimbursement for public assistance
381 monies previously paid to the recipient or children.

382 (2) Court orders of support for any child or children
383 receiving services through Title IV-D of the federal Social
384 Security Act shall be amended, by operation of law, and without
385 the necessity of a motion by the Child Support Unit and a hearing
386 thereon to provide that the payment of support shall be directed
387 by the absent parent to the Child Support Unit of the Office of
388 Attorney General Central Receipting and Disbursement Unit as
389 provided in Section 43-19-37 and not to the recipient. The absent
390 parent shall be notified of such amendment prior to it taking
391 effect.

392 (3) Any attorney authorized by the state to initiate any
393 action pursuant to Title IV-D of the federal Social Security Act,
394 including, but not limited to, any action initiated pursuant to
395 Sections 43-19-31 et seq. and 93-25-1 et seq. shall be deemed to
396 represent the interest of the Child Support Unit exclusively; no
397 attorney-client relationship shall exist between said attorney and
398 any recipient of services pursuant to Title IV-D of the federal
399 Social Security Act for and on behalf of a child or children,
400 regardless of the name in which the legal proceedings are
401 initiated. Said attorney representing the state in a Title IV-D
402 case is only authorized to appear and prosecute and/or defend
403 issues of support and cannot in a Title IV-D case address or
404 provide representation to the Title IV-D recipient on any other
405 ancillary issues raised or presented in that action.

406 (4) Said assignment to the Child Support Unit shall be free
407 of any legal or equitable defense to the payment of child support
408 that may accrue to any person legally liable for the support of
409 any child or children receiving aid from the State Department of
410 Human Services, as a result of the conduct of the person who is
411 accepting public assistance for and on behalf of said child or
412 children.

413 **SECTION 5.** Section 43-19-37, Mississippi Code of 1972, is
414 amended as follows:

415 43-19-37. (1) Court orders of support in all cases brought
416 under the provisions of Sections 43-19-31 through 43-19-53 shall
417 specify that the payment of court costs shall be directed by the
418 absent parent to the Child Support Unit Central Receiving and
419 Disbursement Unit for further disbursement in the manner as
420 prescribed by Title IV-D of the federal Social Security Act. The
421 court shall assess attorney's fees to recover the costs associated
422 with preparing and prosecuting the case, which shall be paid
423 directly to the Child Support Unit of the Office of Attorney
424 General solely for the support of the legal division of the Child

425 Support Unit, in a manner separate and distinct from the payment
426 of child support. The court may allow the defendant to pay the
427 attorney's fee over a period not to exceed four (4) months. The
428 state portion of attorney's fees paid into the Child Support Unit
429 shall be used to match federal funds for the support of the legal
430 division of the Child Support Unit, in conjunction with the Office
431 of Attorney General. Any payments made by the absent parent
432 directly to the recipient or applicant in violation of the court
433 order shall not be deemed to be a support payment or an attorney's
434 fee and shall not be credited to the court-ordered obligation of
435 said absent parent or to the court-ordered obligation for the
436 payment of the attorney's fee. Failure of the absent parent to
437 comply with an order of support or for payment of an attorney's
438 fee for a period of thirty (30) days shall be directed to the
439 court having jurisdiction of the matter for contempt proceedings
440 or execution issued in the manner and form prescribed by statute.
441 Should civil proceedings become ineffective in producing support
442 or attorney's fees in any case involving a legitimate child or a
443 child wherein paternity has been established by law or
444 acknowledged in writing, the case shall promptly be referred to
445 the district attorney for prosecution as a violation of Section
446 97-5-3.

447 (2) Each application, petition, order or filing made under
448 this section shall include the social security number(s) of the
449 applicant or father, mother and child(ren), as applicable, in
450 accordance with Section 93-11-64, Mississippi Code of 1972.

451 **SECTION 6.** Section 43-19-44, Mississippi Code of 1972, is
452 amended as follows:

453 43-19-44. For purposes of this section, an "authorized
454 person" shall mean:

455 (a) Any agent or attorney of any state having in effect
456 a plan approved under federal law, who has the duty or authority
457 under such plan to seek to recover any amounts owed as child and

458 spousal support (including, when authorized under the state plan,
459 any official of a political subdivision);

460 (b) The court which has authority to issue an order or
461 to serve as the initiating court in an action to seek an order
462 against a noncustodial parent of the support and maintenance of a
463 child, or any agent of such court;

464 (c) The resident parent, legal guardian, attorney or
465 agent of a child (other than a child receiving federal assistance
466 as determined by federal regulation) without regard to the
467 existence of a court order against a noncustodial parent who has a
468 duty to support and maintain any such child;

469 (d) A state agency that is administering a program
470 operated under a state plan approved under federal law;

471 (e) Any agent or attorney of any state having an
472 agreement under this section, who has the duty or authority under
473 the law of such state to enforce a child custody or visitation
474 determination;

475 (f) Any court having jurisdiction to make or enforce
476 such a child custody or visitation determination, or any agent of
477 such court; and

478 (g) Any agent or attorney of the United States, or of a
479 state having an agreement under this section, who has the duty or
480 authority to investigate, enforce or bring a prosecution with
481 respect to the unlawful taking or restraint of a child.

482 The Child Support Unit shall safeguard personal data if the
483 Child Support Unit is provided with reasonable evidence of a risk
484 of harm. A state agency, court, department of another state,
485 obligor, obligee and such other persons or entities as the Child
486 Support Unit may specify may provide the Child Support Unit with
487 reasonable evidence of a risk of harm in such manner as the Child
488 Support Unit may require. The Child Support Unit shall not be
489 required to safeguard personal data in intrastate cases for longer
490 than one (1) year unless the Child Support Unit is provided with

491 reasonable evidence of a continued risk of harm in such manner as
492 the Child Support Unit may require. The Child Support Unit shall
493 notify individuals whose personal data is safeguarded under this
494 section that in order for the safeguards to remain in effect, such
495 individuals must provide the Child Support Unit annually with
496 reasonable evidence of a continued risk of harm. For the purposes
497 of this section, "reasonable evidence of a risk of harm" shall
498 mean reasonable evidence that the release of information may
499 result in physical harm to the parent or child, that the release
500 of information may result in emotional harm to the parent or child
501 which would significantly reduce the parent's capacity to care for
502 the child, or would significantly reduce the parent or child's
503 ability to function adequately, or that a protective order or
504 restraining order has been issued on behalf of the parent or
505 child.

506 If the Child Support Unit is provided with reasonable
507 evidence of a risk of harm, the Child Support Unit, its employees
508 and its contractors shall not disclose any personal data that
509 could otherwise be disclosed about the location of a parent or
510 child, including residential address, telephone number and name,
511 address and telephone number of employer, and shall not disclose
512 the social security number of a parent or child; provided,
513 however, that such personal data may be shared by and between
514 employees of the Child Support Unit and its contractors; provided
515 further, that the Child Support Unit may disclose such personal
516 data to the Federal Parent Locator Service, to the court, or agent
517 of a court that is authorized to receive information from the
518 Federal Parent Locator Service established pursuant to Title IV-D
519 of the Social Security Act.

520 Provided further, that the Child Support Unit may disclose
521 the social security number of a child receiving IV-D services for
522 the purposes directly connected to obtaining health care coverage
523 for such child to an employer or provider of health care coverage.

524 If the Child Support Unit is provided with reasonable
525 evidence of a risk of harm pursuant to this section, the Child
526 Support Unit shall notify the Federal Parent Locator Service
527 established pursuant to Title IV-D of the Social Security Act that
528 a risk of harm exists. Upon order of the court in an intrastate
529 matter the Child Support Unit shall release personal data, which
530 may include location information and social security numbers, to
531 such court or agent, as required by said Title IV-D of the Social
532 Security Act; provided, however, that if the Child Support Unit
533 has been provided with reasonable evidence of a risk of harm, the
534 Child Support Unit shall notify the court or agent that the Child
535 Support Unit has received such information; before making any
536 disclosure of such personal data, the court is required to
537 determine whether such disclosure to any other person could be
538 harmful to the parent or child. A person or agency seeking
539 disclosure of personal data which the Child Support Unit is
540 prohibited from disclosing because of a risk of harm, but which
541 could otherwise be disclosed, may file a petition with the
542 chancery court to request disclosure of such personal data.

543 Upon an order by the court in interstate cases to override
544 nondisclosure procedures in cases dealing with domestic violence,
545 the court shall order the Child Support Unit to release this
546 information within thirty (30) days of the order. Whereupon, the
547 Child Support Unit shall transmit said court order to the Federal
548 Office of Child Support Enforcement (OCSE), Federal Parent Locator
549 Service (FPLS), whereby OCSE will notify the Child Support Unit of
550 its decision to remove the nondisclosure code. Upon notification
551 from OCSE, the Child Support Unit shall release said information
552 unto the court.

553 Any unauthorized disclosure or unauthorized willful
554 inspection made in a good faith effort to comply with this section
555 shall not be considered a violation of this section.

556 A person or agency, including the Child Support Unit, seeking
557 personal data which the Child Support Unit is prohibited from
558 disclosing because of a risk of harm, but which could otherwise be
559 disclosed or which the Federal Parent Locator Service established
560 pursuant to Title IV-D of the Social Security Act is prohibited
561 from disclosing because the Secretary of the Federal Department of
562 Health and Human Services has been notified that there is a
563 reasonable evidence of domestic violence or child abuse, may file
564 a petition with the court where the person resides to request
565 disclosure of such personal data. The petition shall specify the
566 purpose for which such personal data is required. When a petition
567 is filed, or when the court receives notice from the Child Support
568 Unit that the Child Support Unit has been notified of a risk of
569 harm, the court shall determine whether disclosure of personal
570 data could be harmful to the parent or child before releasing such
571 data to any other person or agency. In making such determination,
572 the court shall notify the parent that the court has received a
573 request to release personal data and shall provide a specific date
574 by which the parent must object to release of the information and
575 provide the basis for objection. The parent may provide such
576 information in writing and shall not be required to appear in
577 person to contest the release of information. The court shall
578 also notify the Child Support Unit of any petition filed pursuant
579 to this section and the Child Support Unit shall release to the
580 court any information which it has been provided regarding the
581 risk of harm; however, the Child Support Unit shall not be made a
582 party to the action. Further, the attorney for the Child Support
583 Unit, in any proceeding herein, shall not be deemed to be
584 appearing in a representative capacity for any party. The court
585 may also request information directly from the Federal Parent
586 Locator Service from the Child Support Unit of another state, and
587 from any other source.

588 In determining whether disclosure of personal data could be
589 harmful to the parent or child, the court shall consider any
590 relevant information provided by the parent or child, any
591 information provided by the Child Support Unit or by the Child
592 Support Unit of another state, and any evidence provided by the
593 person seeking the personal data. Documentary evidence
594 transmitted to the court by facsimile, telecopier or other means
595 that do not provide an original writing may not be excluded from
596 evidence on an objection based on the means of transmission. The
597 court may permit a party or witness to be deposed or to testify by
598 telephone, audiovisual means, or other electronic means.

599 The court may enter an order (1) impounding the personal data
600 and prohibiting any disclosure by the court or its agents, (2)
601 permitting disclosure by the court or its agents to a specific
602 person or persons, or (3) removing any restrictions on disclosure
603 by the court and its agents. An order permitting disclosure of
604 personal data may specify the purposes for which the data may be
605 used and may prohibit a person to whom the data is disclosed from
606 making further disclosures to any other person. The court shall
607 notify the Child Support Unit of any order entered pursuant to
608 this section. Any person or agency who violates an order issued
609 pursuant to this section may be held in contempt of court and
610 subject to the penalties provided herein.

611 The court may disclose location information about a parent
612 for the limited purpose of notifying the parent of a proceeding
613 under this section or of any other proceeding in court, provided
614 that such information shall not be disclosed to another party
615 unless the court issues an order pursuant to this section
616 permitting such disclosure.

617 **SECTION 7.** Section 43-19-46, Mississippi Code of 1972, is
618 amended as follows:

619 43-19-46. (1) Each employer, as defined in Section
620 93-11-101, doing business in Mississippi shall report to the

621 Directory of New Hires within the Child Support Unit of the Office
622 of Attorney General:

623 (a) The hiring of any person who resides or works in
624 this state to whom the employer anticipates paying wages; and

625 (b) The hiring or return to work of any employee who
626 was laid off, furloughed, separated, granted leave without pay or
627 was terminated from employment.

628 (2) Employers shall report, by mailing or by other means
629 authorized by the Child Support Unit, a copy of the employee's W-4
630 form or its equivalent which will result in timely reporting.

631 Each employer shall submit reports within fifteen (15) days of the
632 hiring, rehiring or return to work of the employee. The report
633 shall contain:

634 (a) The employee's name, address, social security
635 number and the date of birth;

636 (b) The employer's name, address, and federal and state
637 withholding tax identification numbers; and

638 (c) The date upon which the employee began or resumed
639 employment, or is scheduled to begin or otherwise resume
640 employment.

641 (3) The Child Support Unit shall retain the information,
642 which shall be forwarded to the federal registry of new hires.

643 (4) The Child Support Unit may operate the program, may
644 enter into a mutual agreement with the Mississippi Department of
645 Employment Security or the State Tax Commission, or both, for the
646 operation of the Directory of New Hires Program, or the Child
647 Support Unit may contract for such service, in which case the
648 Child Support Unit shall maintain administrative control of the
649 program.

650 (5) In cases in which an employer fails to report
651 information, as required by this section, an administratively
652 levied civil penalty in an amount not to exceed Five Hundred
653 Dollars (\$500.00) shall apply if the failure is the result of a

654 conspiracy between the employer and employee to not supply the
655 required report or to supply a false or incomplete report. The
656 penalty shall otherwise not exceed Twenty-five Dollars (\$25.00).
657 Appeal shall be as provided in Section 43-19-58.

658 **SECTION 8.** Section 43-19-47, Mississippi Code of 1972, is
659 amended as follows:

660 43-19-47. (1) The Child Support Unit of the Office of
661 Attorney General * * * may appoint at least one (1) full-time
662 staff attorney in or for each chancery court district for the
663 purpose of initiating proceedings under the provisions of Sections
664 43-19-31 through 43-19-53 in securing child support and
665 establishing paternity. The qualifications and annual salary of
666 each of the attorneys appointed by the Child Support Unit, * * *
667 under the provisions of Sections 43-19-31 through 43-19-53 shall
668 be fixed at such sums as may be deemed proper in accordance with
669 the salaries of other full-time employed state attorneys with the
670 Attorney General's Office. Such salaries, inclusive of all
671 reimbursable travel and other expenses, inclusive of financial
672 arrangements perfected with the appropriate courts, the law
673 enforcement officials and the district attorneys, shall be paid
674 monthly from the funds appropriated to the Child Support Unit of
675 the Office of Attorney General and from the special fund for the
676 Division of Child Support in which the interest from its accounts
677 and all attorney's fees and other fees is placed. The Mississippi
678 Personnel Board shall survey the salaries of other Mississippi
679 attorneys with the Attorney General's Office each year and shall
680 raise the start step of the staff and senior attorneys accordingly
681 and the minimum shall never go below Forty Thousand Dollars
682 (\$40,000.00) for staff attorneys or Fifty Thousand Dollars
683 (\$50,000.00) for senior attorneys.

684 (2) To assist in the implementation of the provisions of
685 Sections 43-19-31 through 43-19-53, the Attorney General is
686 empowered to enter into cooperative agreements with district

687 attorneys, county attorneys and attorneys employed by the county
688 boards of supervisors * * *. Said cooperative agreements shall be
689 made in compliance with the regulations established by the
690 Secretary of the Department of Health and Human Services, and may
691 be funded either by funds appropriated to the Child Support Unit
692 of the Office of Attorney General or funds appropriated by any
693 county board of supervisors in this state for their respective
694 county. Attorneys may be hired contractually to be paid in
695 amounts commensurate with the Child Support Unit's staff
696 attorneys.

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

699 43-19-48. (1) The Child Support Unit and financial
700 institutions doing business in the state are required to enter
701 into agreements:

702 (a) To develop and operate a data match system, using
703 automated data exchanges, in which each such financial institution
704 is required to provide for each calendar quarter the name, record
705 address, social security number or other taxpayer identification
706 number, and other identifying information for each noncustodial
707 parent who maintains an account at such institution and who owes
708 past-due support, as identified by the Child Support Unit by name
709 and social security number or other taxpayer identification
710 number;

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

714 (c) To provide for payment of reasonable fees to
715 financial institutions for conducting data matches, and for
716 responding to other requests made pursuant to this section, with
717 such fees not to exceed the actual costs incurred by such
718 financial institutions.

719 (2) When the operation of such data match system results in
720 the location of an account of a noncustodial parent who owes
721 past-due support, or when such account is located through any
722 means, the Child Support Unit may request and shall receive
723 additional financial or other information including account
724 numbers, names and social security numbers on record for accounts,
725 and account balances, from any financial institution needed to
726 establish, modify or enforce a support order.

727 (3) The Child Support Unit shall have the authority to
728 encumber and seize assets held by an obligor in a financial
729 institution doing business in Mississippi. Such assets shall be
730 encumbered for either:

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

732 (b) Until such time as the issue of overdue support is
733 resolved, provided the obligor has filed a petition for hearing
734 with a court of appropriate jurisdiction and the financial
735 institution receives written notice thereof from the Child Support
736 Unit before the end of the said forty-five-day period.

737 (4) Notice of such encumbrance initiated by the Child
738 Support Unit shall be provided to the financial institution and to
739 the obligor:

740 (a) The Child Support Unit shall send, by certified
741 mail, notice to the financial institution with which the account
742 is placed, directing that the financial institution shall:

743 (i) Immediately encumber funds in any account(s)
744 in which the obligor has an interest, and to the extent of the
745 debt indicated in the notice from the Child Support Unit;

746 (ii) Forward the encumbered funds to the Child
747 Support Unit after either the forty-five-day period stated in
748 subsection 3(a) of this section, or a determination favorable to
749 the Child Support Unit by a court of appropriate jurisdiction; or

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

752 (b) Notice shall be delivered to the obligor at the
753 current mailing address as recorded by the Child Support Unit.
754 Such notice shall be sent by regular mail at the commencement of
755 the action described herein.

756 (c) The financial institution shall not disclose to an
757 account holder or the depositor that the name of such person has
758 been received from or furnished to the Child Support Unit. The
759 financial institution shall disclose to its account holders or its
760 depositors that under the data match system the Child Support Unit
761 has the authority to request certain identifying information on
762 the account holders' or the depositor's accounts.

763 (5) Challenges to encumbrance of an account:

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

767 (b) Challenges shall be made by the filing of a
768 petition for hearing by the obligor in a court of appropriate
769 jurisdiction under Rule 81(d)(2) of the Mississippi Rules of Civil
770 Procedure. Service upon the Child Support Unit shall be as
771 prescribed by Rule 4(d)(5) of the Mississippi Rules of Civil
772 Procedure.

773 (c) Grounds for the petition challenging the
774 encumbrance shall be limited to:

775 (i) Mistakes of identity; or

776 (ii) Mistakes in amount of overdue support.

777 (6) Liability of the financial institution and the Child
778 Support Unit:

779 (a) Neither the Child Support Unit nor the financial
780 institution shall be liable for any applicable early withdrawal
781 penalties on the obligor's account(s).

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

785 pursuant to this chapter or for the escrow, encumbrance, seizure
786 or surrender of any assets held by the financial institution in
787 response to any notice issued by the * * * Child Support Unit or
788 any contractors or agents thereof unless the disclosure or failure
789 to disclose was willful or intentional, or for any other action
790 taken in good faith to comply with the requirements of this
791 chapter.

792 (7) Any amount encumbered and forwarded by the financial
793 institution under this section shall not exceed the arrearage owed
794 by the obligor.

795 (8) The provisions herein and any other relevant sections
796 shall be employed equally by authorized contractors of the Child
797 Support Unit to collect delinquent support payments.

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

800 (a) For any disclosure of information to the Child
801 Support Unit;

802 (b) For encumbering or forwarding any assets held by
803 such financial institution in response to a notice of lien or
804 levy;

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

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

808 (a) The term "financial institution" has the meaning
809 given to such by Section 81-12-3, Mississippi Code of 1972, and
810 shall include, but not be limited to, credit unions, stock
811 brokerages, public or private entities administering retirement,
812 savings, annuities, life insurance and/or pension funds;

813 (b) The term "account" means a demand deposit account,
814 checking or negotiable withdrawal order account, savings account,
815 time deposit account or money-market mutual fund account.

816 (11) Failure to comply with the provisions of this section
817 or the willful rendering of false information shall subject the

818 financial institution to a fine of not less than One Thousand
819 Dollars (\$1,000.00).

820 **SECTION 10.** Section 43-19-49, Mississippi Code of 1972, is
821 amended as follows:

822 43-19-49. There is hereby authorized to be employed by the
823 Child Support Unit of the Office of Attorney General such other,
824 investigative, technical, secretarial and supportive staff as may
825 be necessary for the proper and necessary implementation of the
826 requirements of Public Law 93-647, 93rd Congress, and any
827 amendments adopted thereto applicable to said program as provided
828 under Sections 43-19-31 through 43-19-53; said positions shall be
829 subject to the merit system's rules and regulations and their
830 salaries shall be fixed in such amounts as the Attorney General
831 may deem proper.

832 **SECTION 11.** Section 43-19-53, Mississippi Code of 1972, is
833 amended as follows:

834 43-19-53. Not later than sixty (60) days after the first day
835 of January of each year, the Child Support Unit shall cause to be
836 published for the preceding calendar year a detailed report
837 showing the total number of cases in the aid to dependent children
838 program reported on the basis of fraud or suspected fraud, the
839 total number investigated, prosecuted and disposed of civilly
840 and/or criminally in each county of the state and the total number
841 of support and paternity cases reported, investigated, continued,
842 prosecuted civilly, and the total amount of support collected.

843 **SECTION 12.** Section 43-19-55, Mississippi Code of 1972, is
844 amended as follows:

845 43-19-55. The Child Support Unit of the Office of Attorney
846 General shall be authorized in maintaining separate accounts with
847 Mississippi banks to handle funds received as incentives from the
848 federal government earned as a result of collecting support and
849 also any funds maintained on deposit as a result of federal and
850 state income tax offsets and any other relevant account, and to

851 aggressively manage the float in these accounts so as to accrue
852 maximum interest advantage of the funds in the account, and to
853 retain all earned interest on these funds to be applied to defray
854 the expenses of the Child Support Unit.

855 **SECTION 13.** Section 43-19-57, Mississippi Code of 1972, is
856 amended as follows:

857 43-19-57. (1) Any administrative subpoena issued by the
858 Child Support Unit of the Office of Attorney General pursuant to
859 the provisions of Laws, 1997, Chapter 588, shall be directed to
860 the appropriate party or entity and signed by the Attorney
861 General, or his designee.

862 (2) A person wishing to appeal the issuance of an
863 administrative subpoena shall have recourse to the chancery courts
864 as for any subpoena.

865 **SECTION 14.** Section 43-19-58, Mississippi Code of 1972, is
866 amended as follows:

867 43-19-58. (1) Persons wishing to contest the imposition of
868 an administrative civil penalty under the provisions of Laws,
869 1997, Chapter 588, shall be entitled to a hearing before the Child
870 Support Unit by so requesting within twenty (20) days after
871 receiving notice of the imposition of the administratively imposed
872 civil penalty. The request shall identify the civil penalty
873 contested and legibly state the contestant's name, mailing address
874 and home and daytime phone numbers. The date, time and place for
875 the hearing shall be made as convenient as possible for the
876 contestant, who shall receive notice thereof not less than seven
877 (7) days before the hearing. A hearing on whether to impose a
878 civil penalty and to consider circumstances in mitigation shall be
879 held on the time and the place specified in the notice. The
880 contestant may appear in person, through his attorney or, prior to
881 the date set for the hearing, submit written testimony and other
882 evidence, subject to the penalty for false swearing, for entry in
883 the hearing record.

884 (2) After the hearing, the Child Support Unit shall issue
885 its order, which may be appealed to the chancery court of the
886 county in which the contestant resides in the same manner as is
887 provided by law for appeals originating from county courts.

888 (3) The Child Support Unit may file the order assessing the
889 penalty, or a certified copy of the order, with the clerk of any
890 chancery court in the state after expiration of the time in which
891 an appeal may be taken, or final determination of the matter on
892 appeal, whereupon the order assessing the penalty shall be
893 enrolled on the judgment roll and may be enforced in the same
894 manner as a judgment.

895 **SECTION 15.** Section 43-19-59, Mississippi Code of 1972, is
896 amended as follows:

897 43-19-59. (1) The Child Support Unit of the Office of
898 Attorney General, as the Title IV-D child support enforcement
899 agency of this state, shall use high-volume automated
900 administrative enforcement, to the same extent as used for
901 intrastate cases, in response to a request made by another state
902 to enforce support orders, and shall promptly report the results
903 of such enforcement procedure to the requesting state.

904 (2) In this section, "high-volume, automated administrative
905 enforcement" means the use of automatic data processing to search
906 various available state databases, including, but not limited to,
907 license records, employment service data, and state new hire
908 registries, to determine whether information is available
909 regarding a parent who owes a child support obligation.

910 (3) The Child Support Unit may, by electronic or other
911 means, transmit to another state or receive from another state a
912 request for assistance in enforcing support orders through
913 high-volume, automated administrative enforcement, which request:

914 (a) Shall include such information as will enable the
915 state to which the request is transmitted to compare the

916 information about the cases to the information in the data bases
917 of the state receiving the request; and

918 (b) Shall constitute a certification by the requesting
919 state:

920 (i) Of the amount of support under an order the
921 payment of which is in arrears; and

922 (ii) That the requesting state has complied with
923 all procedural due process requirements applicable to each case.

924 (c) If the Child Support Unit provides assistance to
925 another state with respect to a case, or if another state seeks
926 assistance from the Child Support Unit pursuant to this section,
927 neither state shall consider the case to be transferred to the
928 caseload of such other state.

929 **SECTION 16.** This act shall take effect and be in force from
930 and after July 1, 2005.