

By: Senator(s) Tollison

To: Judiciary, Division A

SENATE BILL NO. 2976

1 AN ACT TO AMEND SECTION 85-3-1, MISSISSIPPI CODE OF 1972, TO
2 CLARIFY THAT CASH ON DEPOSIT MAY BE SELECTED BY A DEBTOR FOR
3 EXEMPTION FROM EXECUTION ON THE SAME BASIS AS CASH, SUBJECT TO THE
4 CUMULATIVE VALUE LIMITATION; TO AMEND SECTION 85-3-4, MISSISSIPPI
5 CODE OF 1972, TO PROVIDE THAT EXEMPT DISPOSABLE EARNINGS REMAIN
6 EXEMPT FOR 30 DAYS AFTER DEPOSIT; TO AMEND SECTIONS 11-35-23 AND
7 11-35-25, MISSISSIPPI CODE OF 1972, TO CLARIFY FUNDS EXEMPTED
8 UNDER FEDERAL LAW; AND FOR RELATED PURPOSES.

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

10 **SECTION 1.** Section 85-3-1, Mississippi Code of 1972, is
11 amended as follows:

12 85-3-1. There shall be exempt from seizure under execution
13 or attachment:

14 (a) Tangible or intangible personal property of the
15 following kinds selected by the debtor, not exceeding Ten Thousand
16 Dollars (\$10,000.00) in cumulative value:

17 (i) Household goods, wearing apparel, books,
18 animals or crops;

19 (ii) Motor vehicles;

20 (iii) Implements, professional books or tools of
21 the trade;

22 (iv) Cash on hand;

23 (v) Intangible property involving the right to
24 receive money or credit, including, but not limited to, bank and
25 other accounts, stocks and bonds, earned income credits, child
26 care credits, child credits, or tax refunds;

27 (vi) Professionally prescribed health aids;

28 (vii) Any item of tangible personal property worth
29 less than Two Hundred Dollars (\$200.00).

30 Household goods, as used in this paragraph (a), means
31 clothing, furniture, appliances, one (1) radio and one (1)
32 television, one (1) firearm, one (1) lawnmower, linens, china,
33 crockery, kitchenware, and personal effects (including wedding
34 rings) of the debtor and his dependents; however, works of art,
35 electronic entertainment equipment (except one (1) television and
36 one (1) radio), jewelry (other than wedding rings), and items
37 acquired as antiques are not included within the scope of the term
38 "household goods." This paragraph (a) shall not apply to distress
39 warrants issued for collection of taxes due the state or to wages
40 described in Section 85-3-4.

41 (b) (i) The proceeds of insurance on property, real
42 and personal, exempt from execution or attachment, and the
43 proceeds of the sale of such property.

44 (ii) Income from disability insurance.

45 (c) All property, real, personal and mixed, for the
46 collection or enforcement of any order or judgment, in whole or in
47 part, issued by any court for civil or criminal contempt of said
48 court; expressly excepted herefrom are such orders or judgments
49 for the payment of alimony, separate maintenance and child support
50 actions.

51 (d) All property in this state, real, personal and
52 mixed, for the satisfaction of a judgment or claim in favor of
53 another state or political subdivision of another state for
54 failure to pay that state's or that political subdivision's income
55 tax on benefits received from a pension or other retirement plan.
56 As used in this paragraph (d), "pension or other retirement plan"
57 includes:

58 (i) An annuity, pension, or profit-sharing or
59 stock bonus or similar plan established to provide retirement
60 benefits for an officer or employee of a public or private
61 employer or for a self-employed individual;

62 (ii) An annuity, pension, or military retirement
63 pay plan or other retirement plan administered by the United
64 States; and

65 (iii) An individual retirement account.

66 (e) One (1) mobile home, trailer, manufactured housing,
67 or similar type dwelling owned and occupied as the primary
68 residence by the debtor, not exceeding a value of Twenty Thousand
69 Dollars (\$20,000.00); in determining this value, existing
70 encumbrances on said dwelling, including taxes and all other
71 liens, shall first be deducted from the actual value of said
72 dwelling. A debtor is not entitled to the exemption of a mobile
73 home as personal property who claims a homestead exemption under
74 Section 85-3-21, and the exemption shall not apply to collection
75 of delinquent taxes under Sections 27-41-101 through 27-41-109.

76 (f) Assets held in, or monies payable to the
77 participant or beneficiary from, whether vested or not, (i) a
78 pension, profit-sharing, stock bonus or similar plan or contract
79 established to provide retirement benefits for the participant or
80 beneficiary and qualified under Section 401(a), 403(a), or 403(b)
81 of the Internal Revenue Code (or corresponding provisions of any
82 successor law), including a retirement plan for self-employed
83 individuals qualified under one of such enumerated sections, (ii)
84 an eligible deferred compensation plan described in Section 457(b)
85 of the Internal Revenue Code (or corresponding provisions of any
86 successor law), or (iii) an individual retirement account or an
87 individual retirement annuity within the meaning of Section 408 of
88 the Internal Revenue Code (or corresponding provisions of any
89 successor law), including a simplified employee pension plan.

90 (g) Nothing in this section shall in any way affect the
91 rights or remedies of the holder or owner of a statutory lien or
92 voluntary security interest.

93 **SECTION 2.** Section 85-3-4, Mississippi Code of 1972, is
94 amended as follows:

95 85-3-4. (1) The wages, salaries or other compensation of
96 laborers or employees, residents of this state, shall be exempt
97 from seizure under attachment, execution or garnishment for a
98 period of thirty (30) days from the date of service of any writ of
99 attachment, execution or garnishment.

100 (2) After the passage of the period of thirty (30) days
101 described in subsection (1) of this section, the maximum part of
102 the aggregate disposable earnings (as defined by Section 1672(b)
103 of Title 15, United States Code Annotated) of an individual that
104 may be levied by attachment, execution or garnishment shall be:

105 (a) In the case of earnings for any workweek, the
106 lesser amount of either,

107 (i) Twenty-five percent (25%) of his disposable
108 earnings for that week, or

109 (ii) The amount by which his disposable earnings
110 for that week exceed thirty (30) times the federal minimum hourly
111 wage (prescribed by section 206 (a)(1) of Title 29, United States
112 Code Annotated) in effect at the time the earnings are payable; or

113 (b) In the case of earnings for any period other than a
114 week, the amount by which his disposable earnings exceed the
115 following "multiple" of the federal minimum hourly wage which is
116 equivalent in effect to that set forth in subparagraph (a)(ii) of
117 this subsection (2): The number of workweeks, or fractions
118 thereof multiplied by thirty (30) multiplied by the applicable
119 federal minimum wage.

120 (3) (a) The restrictions of subsection (1) and (2) of this
121 section do not apply in the case of:

122 (i) Any order for the support of any person issued
123 by a court of competent jurisdiction or in accordance with an
124 administrative procedure, which is established by state law, which
125 affords substantial due process, and which is subject to judicial
126 review.

127 (ii) Any debt due for any state or local tax.

128 (b) Except as provided in subparagraph (b)(iii) of this
129 subsection (3), the maximum part of the aggregate disposable
130 earnings of an individual for any workweek which is subject to
131 garnishment to enforce any order for the support of any person
132 shall not exceed:

133 (i) Where such individual is supporting his spouse
134 or dependent child (other than a spouse or child with respect to
135 whose support such order is used), fifty percent (50%) of such
136 individual's disposable earnings for that week; and

137 (ii) Where such individual is not supporting such
138 a spouse or dependent child described in subparagraph (b)(i) of
139 this subsection (3), sixty percent (60%) of such individual's
140 disposable earnings for that week;

141 (iii) With respect to the disposable earnings of
142 any individual for that workweek, the fifty percent (50%)
143 specified in subparagraph (b)(i) of this subsection (3) shall be
144 deemed to be fifty-five percent (55%) and the sixty percent (60%)
145 specified in subparagraph (b)(ii) of this subsection (3) shall be
146 deemed to be sixty-five percent (65%), if and to the extent that
147 such earnings are subject to garnishment to enforce a support
148 order with respect to a period which is prior to the period of
149 twelve (12) weeks which ends with the beginning of such workweek.

150 (4) The exempt disposable earnings described in this section
151 remain exempt for thirty (30) days after deposit in any financial
152 institution.

153 **SECTION 3.** Section 85-3-17, Mississippi Code of 1972, is
154 amended as follows:

155 85-3-17. (1) The proceeds of any judgment or settlement not
156 exceeding Ten Thousand Dollars (\$10,000.00) recovered by any
157 person on account of personal injuries sustained, shall inure to
158 the party or parties in whose favor such judgment may be rendered
159 or settlement made, free from all liabilities for the debts of the
160 person injured.

161 (2) Proceeds not exceeding Ten Thousand Dollars (\$10,000.00)
162 attributable to any chose in action based on personal injuries
163 sustained shall inure to the party or parties in whose favor an
164 eventual judgment may be rendered or settlement made, free from
165 all liabilities for the debts of the person injured.

166 **SECTION 4.** Section 11-35-23, Mississippi Code of 1972, is
167 amended as follows:

168 11-35-23. (1) Except for wages, salary or other
169 compensation or funds exempt from garnishment, execution or
170 attachment by virtue of state or federal law and identifiable
171 through the use of first-in, first-out accounting, including, but
172 not limited to, individuals' directly deposited Social Security
173 and Veterans Administration payments, all property in the hands of
174 the garnishee belonging to the defendant at the time of the
175 service of the writ of garnishment shall be bound by and subject
176 to the lien of the judgment, decree or attachment on which the
177 writ shall have been issued. If the garnishee shall surrender
178 such property to the sheriff or other officer serving the writ,
179 the officer shall receive the same and, in case the garnishment
180 issued on a judgment or decree, shall make sale thereof as if
181 levied on by virtue of an execution, and return the money arising
182 therefrom to satisfy the judgment; and if the garnishment issued
183 on an attachment, the officer shall dispose of the property as if
184 it were levied upon by a writ of attachment. And any indebtedness
185 of the garnishee to the defendant, except for wages, salary or
186 other compensation or funds exempt from garnishment, execution or
187 attachment by virtue of state or federal law and identifiable
188 through the use of first-in, first-out accounting, including, but
189 not limited to, individuals' directly deposited Social Security
190 and Veterans Administration payments, shall be bound from the time
191 of the service of the writ of garnishment, and be appropriable to
192 the satisfaction of the judgment or decree, or liable to be
193 condemned in the attachment. Service of writ of garnishment as

194 provided in Section 11-35-11 and this section shall be effective
195 to bind non-exempt funds in the hands of the garnishee.

196 (2) The court issuing any writ of garnishment shall show
197 thereon the amount of the claim of the plaintiff and the court
198 costs in the proceedings and should at any time during the
199 pendency of said proceedings in the court a judgment be rendered
200 for a different amount, then the court shall notify the garnishee
201 of the correct amount due by the defendant under said writ.

202 (3) (a) Except for judgments, liens, attachments, fees or
203 charges owed to the state or its political subdivisions; wages,
204 salary or other compensation in the hands of the garnishee
205 belonging to the defendant at the time of the service of the writ
206 of garnishment shall not be bound by nor subject to the lien of
207 the judgment, decree or attachment on which the writ shall have
208 been issued when the writ of garnishment is issued on a judgment
209 based upon a claim or debt that is less than One Hundred Dollars
210 (\$100.00), excluding court costs.

211 (b) If the garnishee be indebted or shall become
212 indebted to the defendant for wages, salary or other compensation
213 during the first thirty (30) days after service of a proper writ
214 of garnishment, the garnishee shall pay over to the employee all
215 of such indebtedness, and thereafter, the garnishee shall retain
216 and the writ shall bind the nonexempt percentage of disposable
217 earnings, as provided by Section 85-3-4, for such period of time
218 as is necessary to accumulate a sum equal to the amount shown on
219 the writ as due the court, even if such period of time extends
220 beyond the return day of the writ. Unless the court otherwise
221 authorizes the garnishee to make earlier payments or releases, the
222 garnishee shall retain all sums collected pursuant to the writ and
223 make only one (1) payment into court at such time as the total
224 amount shown due on the writ has been accumulated, provided that,
225 at least one (1) payment per year shall be made to the court of
226 the amount that has been withheld during the preceding year.

227 Should the employment of the defendant for any reason be
228 terminated with the garnishee, then the garnishee shall not later
229 than fifteen (15) days after the termination of such employment,
230 report such termination to the court and pay into the court all
231 sums as have been withheld from the defendant's disposable
232 earnings. If the plaintiff in garnishment contests the answer of
233 the garnishee, as now provided by law in such cases, and proves to
234 the court the deficiency or untruth of the garnishee's answer,
235 then the court shall render judgment against the garnishee for
236 such amount as would have been subject to the writ had the said
237 sum not been released to the defendant; provided, however, any
238 garnishee who files a timely and complete answer shall not be
239 liable for any error made in good faith in determining or
240 withholding the amount of wages, salary or other compensation of a
241 defendant which are subject to the writ.

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

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

252 (6) All payments made pursuant to a garnishment issued out
253 of the justice court shall be made directly to the plaintiff or to
254 the plaintiff's attorney as indicated by the plaintiff in his or
255 her suggestion for writ of garnishment. The employer shall notify
256 the court and the plaintiff or the plaintiff's attorney when a
257 judgment is satisfied or when the employee is no longer employed
258 by the employer.

259 **SECTION 5.** Section 11-35-25, Mississippi Code of 1972, is
260 amended as follows:

261 11-35-25. (1) Every person duly summoned as a garnishee
262 shall answer on oath as to the following particulars, viz.:

263 (a) Whether he be indebted to the defendant or were so
264 indebted at the time of the service of the writ on him, or have at
265 any time since been so indebted; and, if so indebted, in what sum,
266 whether due or not, and when due or to become due, and how the
267 debt is evidenced, and what interest it bears;

268 (b) What non-exempt effects of the defendant he has or
269 had at the time of the service of the writ on him, or has had
270 since, in his possession or under his control;

271 (c) Whether he knows or believes that any other person
272 is indebted to the defendant; and, if so, whom, and in what
273 amount, and where he resides; and

274 (d) Whether he knows or believes that any other person
275 has effects of the defendant in his possession or under his
276 control; and, if so, whom, and where he resides.

277 (2) In addition to answering as to the particulars in
278 subsection (1) of this section, each person duly summoned as a
279 garnishee in any case in which he be indebted to the defendant for
280 wages, salary or other compensation shall answer on oath as to
281 whether the defendant is an employee of the garnishee and, if so,
282 the time interval between pay periods of the defendant including
283 any specific day of a week or month on which such defendant is
284 regularly paid.

285 **SECTION 6.** This act shall take effect and be in force from
286 and after July 1, 2005.