

Chapter No. 465
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HOUSE BILL NO. 703

Originated in House Don Richardson Clerk

HOUSE BILL NO. 703

AN ACT TO AMEND SECTIONS 93-11-71, 93-11-101 AND 93-11-103, MISSISSIPPI CODE OF 1972, TO EXTEND THE DATE OF THE REVERTERS ON THE SECTIONS RELATING TO THE ENFORCEMENT OF JUDGMENTS FOR OVERDUE CHILD SUPPORT AND THE ADMINISTRATION OF WITHHOLDING ORDERS FOR CHILD SUPPORT BY THE DEPARTMENT OF HUMAN SERVICES; TO AMEND SECTION 43-19-34, MISSISSIPPI CODE OF 1972, TO EXTEND THE DATE OF THE REPEALER ON THE SECTION ALLOWING STIPULATED AGREEMENTS FOR MODIFICATION OF SUPPORT ORDER; AND FOR RELATED PURPOSES.

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

SECTION 1. Section 93-11-71, Mississippi Code of 1972, is amended as follows:

[Until July 1, 2011, this section shall read as follows:]

93-11-71. (1) Whenever a court orders any person to make periodic payments of a sum certain for the maintenance or support of a child, and whenever such payments as have become due remain unpaid for a period of at least thirty (30) days, a judgment by operation of law shall arise against the obligor in an amount equal to all payments that are then due and owing.

(a) A judgment arising under this section shall have the same effect and be fully enforceable as any other judgment entered in this state. A judicial or administrative action to enforce the judgment may be begun at any time; and

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

(2) Any judgment arising under the provisions of this section shall operate as a lien upon all the property of the judgment debtor, both real and personal, which lien shall be perfected as to third parties without actual notice thereof only upon enrollment on the judgment roll. The department or attorney

representing the party to whom support is owed shall furnish an abstract of the judgment for periodic payments for the maintenance and support of a child, along with sworn documentation of the delinquent child support, to the circuit clerk of the county where the judgment is rendered, and it shall be the duty of the circuit clerk to enroll the judgment on the judgment roll. Liens arising under the provisions of this section may be executed upon and enforced in the same manner and to the same extent as any other judgment.

(3) Notwithstanding the provisions in subsection (2) of this section, any judgment arising under the provisions of this section shall subject the following assets to interception or seizure without regard to the entry of the judgment on the judgment roll of the situs district or jurisdiction and such assets shall apply to all child support owed including all arrears:

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

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

(c) Assets held in financial institutions;

(d) Settlements and awards resulting from civil actions;

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

(f) Lump-sum payments as defined in Section 93-11-101.

(4) Notwithstanding the provisions of subsections (1) and (2) of this section, upon a motion filed by the obligor and a finding of clear and convincing evidence including negative DNA testing that the obligor is not the biological father of the child or children for whom support has been ordered, the court shall

disestablish paternity and may forgive any child support arrears of the obligor for the child or children determined by the court not to be the biological child or children of the obligor, if the court makes a written finding that, based on the totality of the circumstances, the forgiveness of the arrears is equitable under the circumstances.

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

[From and after July 1, 2011, this section shall read as follows:]

93-11-71. (1) Whenever a court orders any person to make periodic payments of a sum certain for the maintenance or support of a child, and whenever such payments as have become due remain unpaid for a period of at least thirty (30) days, a judgment by operation of law shall arise against the obligor in an amount equal to all payments that are then due and owing.

(a) A judgment arising under this section shall have the same effect and be fully enforceable as any other judgment entered in this state. A judicial or administrative action to enforce the judgment may be begun at any time; and

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

(2) Any judgment arising under the provisions of this section shall operate as a lien upon all the property of the judgment debtor, both real and personal, which lien shall be perfected as to third parties without actual notice thereof only upon enrollment on the judgment roll. The department or attorney representing the party to whom support is owed shall furnish an abstract of the judgment for periodic payments for the maintenance and support of a child, along with sworn documentation of the

delinquent child support, to the circuit clerk of the county where the judgment is rendered, and it shall be the duty of the circuit clerk to enroll the judgment on the judgment roll. Liens arising under the provisions of this section may be executed upon and enforced in the same manner and to the same extent as any other judgment.

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

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

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

(c) Assets held in financial institutions;

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

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

(4) Notwithstanding the provisions of subsections (1) and (2) of this section, upon a motion filed by the obligor and a finding of clear and convincing evidence including negative DNA testing that the obligor is not the biological father of the child or children for whom support has been ordered, the court shall disestablish paternity and may forgive any child support arrears of the obligor for the child or children determined by the court not to be the biological child or children of the obligor, if the court makes a written finding that, based on the totality of the

circumstances, the forgiveness of the arrears is equitable under the circumstances.

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

(6) This section shall stand repealed on July 1, 2011.

SECTION 2. Section 93-11-101, Mississippi Code of 1972, is amended as follows:

[Until July 1, 2011, this section shall read as follows:]

93-11-101. As used in Sections 93-11-101 through 93-11-119, the following words shall have the meaning ascribed to them herein unless the context clearly requires otherwise:

(a) "Order for support" means any order of the chancery, circuit, county or family court, which provides for periodic payment of funds for the support of a child, whether temporary or final, and includes any such order which provides for:

(i) Modification or resumption of, or payment of arrearage accrued under, a previously existing order; or

(ii) Reimbursement of support.

"Order for support" shall also mean:

(i) An order for support and maintenance of a spouse if a minor child is living with such spouse; or

(ii) In actions to which the Department of Human Services is a party, an order for support and maintenance of a spouse if a minor child is living with such spouse and such maintenance is collected in conjunction with child support.

(b) "Court" means the court that enters an order for withholding pursuant to Section 93-11-103(1).

(c) "Clerk of the court" means the clerk of the court that enters an order for withholding pursuant to Section 93-11-103(1).

(d) "Arrearage" means the total amount of unpaid support obligations.

(e) "Delinquency" means any payments that are ordered by any court to be paid by a noncustodial parent for the support of a child that have remained unpaid for at least thirty (30) days after payment is due. Delinquency shall also include payments that are ordered by any court to be paid for maintenance of a spouse in cases in which the department is collecting such support in conjunction with child support. "Delinquency" shall be synonymous with "overdue support."

(f) "Department" means the Mississippi Department of Human Services.

(g) "Employer" means a person who has control of the payment of income to an individual.

(h) "Income" means any form of periodic payment to an individual, regardless of source, including, but not limited to: wages, salary, commission, compensation as an independent contractor, workers' compensation, disability, annuity and retirement benefits, and any other payments made by any person, private entity, federal or state government or any unit of local government, notwithstanding any other provisions of state or local law which limit or exempt income or the amount or percentage of income that can be withheld; provided, however, that income excludes:

(i) Any amounts required by law to be withheld, other than creditor claims, including, but not limited to, federal, state and local taxes, social security and other retirement and disability contributions;

(ii) Any amounts exempted by federal law;

(iii) Public assistance payments; and

(iv) Unemployment insurance benefits except as provided by law.

(i) "Obligor" means the individual who owes a duty to make payments under an order for support.

(j) "Obligee" means:

(i) An individual to whom a duty of support is or is alleged to be owed or in whose favor a support order has been issued or a judgment determining parentage has been rendered;

(ii) A state or political subdivision to which the rights under a duty of support or support order have been assigned or which independent claims based on financial assistance provided to an individual obligee; or

(iii) An individual seeking a judgment determining parentage of the individual's child.

(k) "Payor" means any payor of income to an obligor.

(l) "Lump-sum payment" means any form of income paid to an individual at other than regular intervals or a payment made upon a particular occasion regardless of frequency that is dependent upon meeting a condition precedent, including, but not limited to, the performance of a contract, commission paid outside of and in addition to a person's regular pay cycle, the satisfaction of a job performance standard or quota, the receipt of a seasonal or occasional bonus or incentive payment, the liquidation of unused sick or vacation pay or leave, the settlement of a claim, an amount paid as severance pay, or an award for length of service. "Lump-sum payment" shall not include liens under Section 71-3-129.

[From and after July 1, 2011, this section shall read as follows:]

93-11-101. As used in Sections 93-11-101 through 93-11-119, the following words shall have the meaning ascribed to them herein unless the context clearly requires otherwise:

(a) "Order for support" means any order of the chancery, circuit, county or family court which provides for periodic payment of funds for the support of a child, whether temporary or final, and includes any such order which provides for:

(i) Modification or resumption of, or payment of arrearage accrued under, a previously existing order; or

(ii) Reimbursement of support.

"Order for support" shall also mean:

(i) An order for support and maintenance of a spouse if a minor child is living with such spouse; or

(ii) In actions to which the Department of Human Services is a party, an order for support and maintenance of a spouse if a minor child is living with such spouse and such maintenance is collected in conjunction with child support.

(b) "Court" means the court that enters an order for withholding pursuant to Section 93-11-103(1).

(c) "Clerk of the court" means the clerk of the court that enters an order for withholding pursuant to Section 93-11-103(1).

(d) "Arrearage" means the total amount of unpaid support obligations.

(e) "Delinquency" means any payments that are ordered by any court to be paid by a noncustodial parent for the support of a child that have remained unpaid for at least thirty (30) days after payment is due. Delinquency shall also include payments that are ordered by any court to be paid for maintenance of a spouse in cases in which the department is collecting such support in conjunction with child support. "Delinquency" shall be synonymous with "overdue support."

(f) "Department" means the Mississippi Department of Human Services.

(g) "Employer" means a person who has control of the payment of wages to an individual.

(h) "Income" means any form of periodic payment to an individual, regardless of source, including, but not limited to: wages, salary, commission, compensation as an independent contractor, workers' compensation, disability, annuity and retirement benefits, and any other payments made by any person, private entity, federal or state government or any unit of local government, notwithstanding any other provisions of state or local law which limit or exempt income or the amount or percentage of income that can be withheld; provided, however, that income excludes:

(i) Any amounts required by law to be withheld, other than creditor claims, including, but not limited to, federal, state and local taxes, social security and other retirement and disability contributions;

(ii) Any amounts exempted by federal law;

(iii) Public assistance payments; and

(iv) Unemployment insurance benefits except as provided by law.

(i) "Obligor" means the individual who owes a duty to make payments under an order for support.

(j) "Obligee" means:

(i) An individual to whom a duty of support is or is alleged to be owed or in whose favor a support order has been issued or a judgment determining parentage has been rendered;

(ii) A state or political subdivision to which the rights under a duty of support or support order have been assigned or which independent claims based on financial assistance provided to an individual obligee; or

(iii) An individual seeking a judgment determining parentage of the individual's child.

(k) "Payor" means any payor of income to an obligor.

SECTION 3. Section 93-11-103, Mississippi Code of 1972, is amended as follows:

[Until July 1, 2011, this section shall read as follows:]

93-11-103. (1) Upon entry of any order for support by a court of this state where the custodial parent is a recipient of services under Title IV-D of the federal Social Security Act, issued on or after October 1, 1996, the court entering such order shall enter a separate order for withholding which shall take effect immediately without any requirement that the obligor be delinquent in payment. All such orders for support issued prior to October 1, 1996, shall, by operation of law, be amended to conform with the provisions contained herein. All such orders for support issued shall:

(a) Contain a provision for monthly income withholding procedures to take effect in the event the obligor becomes delinquent in paying the order for support without further amendment to the order or further action by the court; and

(b) Require that the payor withhold any additional amount for delinquency specified in any order if accompanied by an affidavit of accounting, a notarized record of overdue payments, official payment record or an attested judgment for delinquency or contempt. Any person who willfully and knowingly files a false affidavit, record or judgment shall be subject to a fine of not more than One Thousand Dollars (\$1,000.00). The Department of Human Services shall be the designated agency to receive payments made by income withholding in child support orders enforced by the department. All withholding orders shall be on a form as prescribed by the department.

(2) Upon entry of any order for support by a court of this state where the custodial parent is not a recipient of services under Title IV-D of the federal Social Security Act, issued or modified or found to be in arrears on or after January 1, 1994, the court entering such order shall enter a separate order for

withholding which shall take effect immediately. Such orders shall not be subject to immediate income withholding under this subsection: (a) if one (1) of the parties (i.e., noncustodial or custodial parent) demonstrates, and the court finds, that there is good cause not to require immediate income withholding, or (b) if both parties agree in writing to an alternative arrangement. The Department of Human Services shall be the designated agency to receive payments made by income withholding in all child support orders. Withholding orders shall be on a form as prescribed by the department.

(3) If a child support order is issued or modified in the state but is not subject to immediate income withholding, it automatically becomes so if the court finds that a support payment is thirty (30) days past due. If the support order was issued or modified in another state but is not subject to immediate income withholding, it becomes subject to immediate income withholding on the date on which child support payments are at least thirty (30) days in arrears, or (a) the date as of which the noncustodial parent requests that withholding begin, (b) the date as of which the custodial parent requests that withholding begin, or (c) an earlier date chosen by the court whichever is earlier.

(4) The clerk of the court shall submit copies of such orders to the obligor's payor, any additional or subsequent payor, and to the Mississippi Department of Human Services Case Registry. The clerk of the court, the obligee's attorney, or the department may serve such immediate order for withholding by first-class mail or personal delivery on the obligor's payor, superintendent, manager, agent or subsequent payor, as the case may be. In a case where the obligee's attorney or the department serves such immediate order, the clerk of the court shall be notified in writing, which notice shall be placed in the court file. There shall be no need for further notice, hearing, order, process or procedure before service of said order on the payor or any

additional or subsequent payor. The obligor may contest, if grounds exist, service of the order of withholding on additional or subsequent payors, by filing an action with the issuing court. Such filing shall not stay the obligor's duty to support pending judicial determination of the obligor's claim. Nothing herein shall be construed to restrict the authority of the courts of this state from entering any order it deems appropriate to protect the rights of any parties involved.

(5) The order for withholding shall:

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

(b) Direct any payor to withhold an additional amount, not less than fifteen percent (15%) of the order for support, until payment in full of any delinquency; and

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

(6) All orders for withholding may permit the Department of Human Services to withhold through said withholding order additional amounts to recover costs incurred through its efforts to secure the support order, including, but not limited to, all filing fees, court costs, service of process fees, mailing costs, birth certificate certification fee, genetic testing fees, the department's attorney's fees; and, in cases where the state or any of its entities or divisions have provided medical services to the child or the child's mother, all medical costs of prenatal care, birthing, postnatal care and any other medical expenses incurred by the child or by the mother as a consequence of her pregnancy or delivery.

(7) At the time the order for withholding is entered, the clerk of the court shall provide copies of the order for withholding and the order for support to the obligor, which shall be accompanied by a statement of the rights, remedies and duties

of the obligor under Sections 93-11-101 through 93-11-119. The clerk of the court shall make copies available to the obligee and to the department or its local attorney.

(8) The order for withholding shall remain in effect for as long as the order for support upon which it is based.

(9) The failure of an order for withholding to state an arrearage is not conclusive of the issue of whether an arrearage is owing.

(10) Any order for withholding entered pursuant to this section shall not be considered a garnishment.

(11) All existing orders for support shall become subject to additional withholding if arrearages occur, subject to court hearing and order. The Department of Human Services or the obligee or his agent or attorney must send to each delinquent obligor notice that:

(a) The withholding on the delinquency has commenced;

(b) The information along with the required affidavit of accounting, notarized record of overdue payment or attested judgment of delinquency or contempt has been sent to the employer; and

(c) The obligor may file an action with the issuing court on the grounds of mistake of fact. Such filing must be made within thirty (30) days of receipt of the notice and shall not stay the obligor's duty to support pending judicial determination of the obligor's claim.

(12) An employer who complies with an income withholding notice that is regular on its face and which is accompanied by the required accounting affidavit, notarized record of overdue payments or attested judgment of delinquency or contempt shall not be subject to civil liability to any individual or agency for conduct in compliance with the notice.

(13) Any employer who has been served with an order for withholding under this section, which includes a provision for

payment of arrears, shall notify the Department of Human Services before making any lump-sum payment of more than Five Hundred Dollars (\$500.00) to the obligor.

An employer to whom this section applies shall notify the Department of Human Services of its intention to make a lump-sum payment at least forty-five (45) days before the planned date of the lump-sum payment, or as soon as the decision is made to make the payment, should that be less than forty-five (45) days. The employer shall not release the lump sum to the obligor until thirty (30) days after the intended date of the payment or until authorization is received from the Department of Human Services, whichever is earlier.

Upon receipt of notice to pay a lump sum from an employer, the Department of Human Services shall provide the employer with a Notice of Lien in accordance with Section 93-11-71 specifying the amount of the lump sum to be withheld for payment of child support arrearage. Unless the lump sum is considered severance pay, any amount of the lump sum up to the entire arrearage may be withheld. If the lump sum is for severance pay, the amount withheld for child support arrearages may not exceed an amount equal to the amount the employer would have withheld if the severance pay had been paid as the employee's usual earnings.

[From and after July 1, 2011, this section shall read as follows:]

93-11-103. (1) Upon entry of any order for support by a court of this state where the custodial parent is a recipient of services under Title IV-D of the federal Social Security Act, issued on or after October 1, 1996, the court entering such order shall enter a separate order for withholding which shall take effect immediately without any requirement that the obligor be delinquent in payment. All such orders for support issued prior to October 1, 1996, shall, by operation of law, be amended to

conform with the provisions contained herein. All such orders for support issued shall:

(a) Contain a provision for monthly income withholding procedures to take effect in the event the obligor becomes delinquent in paying the order for support without further amendment to the order or further action by the court; and

(b) Require that the payor withhold any additional amount for delinquency specified in any order if accompanied by an affidavit of accounting, a notarized record of overdue payments, official payment record or an attested judgment for delinquency or contempt. Any person who willfully and knowingly files a false affidavit, record or judgment shall be subject to a fine of not more than One Thousand Dollars (\$1,000.00). The Department of Human Services shall be the designated agency to receive payments made by income withholding in child support orders enforced by the department. All withholding orders shall be on a form as prescribed by the department

(2) Upon entry of any order for support by a court of this state where the custodial parent is not a recipient of services under Title IV-D of the federal Social Security Act, issued or modified or found to be in arrears on or after January 1, 1994, the court entering such order shall enter a separate order for withholding which shall take effect immediately. Such orders shall not be subject to immediate income withholding under this subsection: (a) if one (1) of the parties (i.e., noncustodial or custodial parent) demonstrates, and the court finds, that there is good cause not to require immediate income withholding, or (b) if both parties agree in writing to an alternative arrangement. The Department of Human Services or any other person or entity may be the designated agency to receive payments made by income withholding in all child support orders. Withholding orders shall be on a form as prescribed by the department.

(3) If a child support order is issued or modified in the state but is not subject to immediate income withholding, it automatically becomes so if the court finds that a support payment is thirty (30) days past due. If the support order was issued or modified in another state but is not subject to immediate income withholding, it becomes subject to immediate income withholding on the date on which child support payments are at least thirty (30) days in arrears, or (a) the date as of which the noncustodial parent requests that withholding begin, (b) the date as of which the custodial parent requests that withholding begin, or (c) an earlier date chosen by the court whichever is earlier.

(4) The clerk of the court shall submit copies of such orders to the obligor's payor, any additional or subsequent payor, and to the Mississippi Department of Human Services Case Registry. The clerk of the court, the obligee's attorney, or the department may serve such immediate order for withholding by first-class mail or personal delivery on the obligor's payor, superintendent, manager, agent or subsequent payor, as the case may be. In a case where the obligee's attorney or the department serves such immediate order, the clerk of the court shall be notified in writing, which notice shall be placed in the court file. There shall be no need for further notice, hearing, order, process or procedure before service of said order on the payor or any additional or subsequent payor. The obligor may contest, if grounds exist, service of the order of withholding on additional or subsequent payors, by filing an action with the issuing court. Such filing shall not stay the obligor's duty to support pending judicial determination of the obligor's claim. Nothing herein shall be construed to restrict the authority of the courts of this state from entering any order it deems appropriate to protect the rights of any parties involved.

(5) The order for withholding shall:

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

(b) Direct any payor to withhold an additional amount, not less than fifteen percent (15%) of the order for support, until payment in full of any delinquency; and

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

(6) All orders for withholding may permit the Department of Human Services to withhold through said withholding order additional amounts to recover costs incurred through its efforts to secure the support order, including, but not limited to, all filing fees, court costs, service of process fees, mailing costs, birth certificate certification fee, genetic testing fees, the department's attorney's fees; and, in cases where the state or any of its entities or divisions have provided medical services to the child or the child's mother, all medical costs of prenatal care, birthing, postnatal care and any other medical expenses incurred by the child or by the mother as a consequence of her pregnancy or delivery.

(7) At the time the order for withholding is entered, the clerk of the court shall provide copies of the order for withholding and the order for support to the obligor, which shall be accompanied by a statement of the rights, remedies and duties of the obligor under Sections 93-11-101 through 93-11-119. The clerk of the court shall make copies available to the obligee and to the department or its local attorney.

(8) The order for withholding shall remain in effect for as long as the order for support upon which it is based.

(9) The failure of an order for withholding to state an arrearage is not conclusive of the issue of whether an arrearage is owing.

(10) Any order for withholding entered pursuant to this section shall not be considered a garnishment.

(11) All existing orders for support shall become subject to additional withholding if arrearages occur, subject to court hearing and order. The Department of Human Services or the obligee or his agent or attorney must send to each delinquent obligor notice that:

(a) The withholding on the delinquency has commenced;

(b) The information along with the required affidavit of accounting, notarized record of overdue payment or attested judgment of delinquency or contempt has been sent to the employer; and

(c) The obligor may file an action with the issuing court on the grounds of mistake of fact. Such filing must be made within thirty (30) days of receipt of the notice and shall not stay the obligor's duty to support pending judicial determination of the obligor's claim.

(12) An employer who complies with an income withholding notice that is regular on its face and which is accompanied by the required accounting affidavit, notarized record of overdue payments or attested judgment of delinquency or contempt shall not be subject to civil liability to any individual or agency for conduct in compliance with the notice.

SECTION 4. Section 43-19-34, Mississippi Code of 1972, is amended as follows:

43-19-34. (1) In lieu of legal proceedings instituted to obtain a modification for an order for support, a written stipulated agreement for modification executed by the responsible parent when acknowledged before a clerk of the court having jurisdiction over those matters or a notary public and filed with and approved by the judge of that court shall have the same force and effect, retroactively and prospectively, in accordance with the terms of the agreement as an order for modification of support

entered by the court, and shall be enforceable and subject to later modification in the same manner as is provided by law for orders of the court in those cases.

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

(3) Every three (3) years, upon the request of either parent, or if there is an assignment under Section 43-19-35, upon the request of the Department of Human Services or of either parent, the department, after a review and determination of appropriateness, or either parent may seek an adjustment to a support order being enforced under Section 43-19-31 in accordance with the guidelines established under Section 43-19-101, if the amount of the child support award under the order differs from the amount that would be awarded in accordance with the guidelines,

taking into account the best interests of the child involved. No proof of a material change in circumstances is necessary in the three-year review for adjustment under this subsection (3). A preexisting arrearage in support payments shall not serve as a bar to the department's review and adjustment procedure. Proof of a material change in circumstances is necessary for modification outside the three-year cycle.

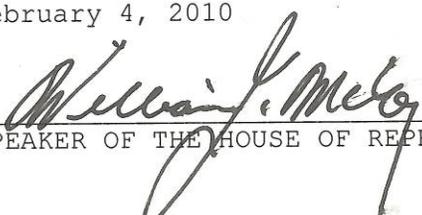
(4) Any order for the support of minor children, whether entered through the judicial system or through an expedited process, shall not be subject to a downward retroactive modification. An upward retroactive modification may be ordered back to the date of the event justifying the upward modification.

(5) If a downward modification is determined to be warranted under the guidelines contained in subsection (3), the noncustodial parent's arrearage, if any, shall not be a basis for contesting the downward modification in any later legal proceedings.

(6) This section shall stand repealed on July 1, 2011.

SECTION 5. This act shall take effect and be in force from and after July 1, 2010.

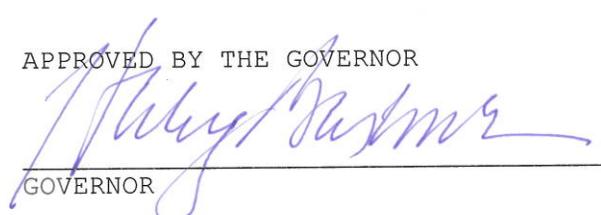
PASSED BY THE HOUSE OF REPRESENTATIVES
February 4, 2010


SPEAKER OF THE HOUSE OF REPRESENTATIVES

PASSED BY THE SENATE
March 10, 2010


PRESIDENT OF THE SENATE

APPROVED BY THE GOVERNOR


GOVERNOR

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