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Chapter No. 530

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HOUSE BILL NO. 344

Originated in House Don Richardson Clerk

HOUSE BILL NO. 344

AN ACT TO CREATE NEW SECTION 93-9-10, MISSISSIPPI CODE OF 1972, TO ESTABLISH CIRCUMSTANCES UNDER WHICH A LEGAL FATHER MAY DISESTABLISH PATERNITY AND TERMINATE A CHILD SUPPORT OBLIGATION; TO AMEND SECTIONS 93-11-71, 93-11-101 AND 93-11-103, MISSISSIPPI CODE OF 1972, TO DELETE THE REVERTERS ON THOSE 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 FURTHER AMEND SECTION 93-11-71, MISSISSIPPI CODE OF 1972, TO CONFORM TO SECTION 1 OF THE ACT; TO PROVIDE THAT A PARENT WHO RECEIVES SOCIAL SECURITY DISABILITY INSURANCE PAYMENTS WHO IS LIABLE FOR A CHILD SUPPORT ARREARAGE SHALL RECEIVE CREDIT TOWARD THE ARREARAGE FOR THE PAYMENT OR PAYMENTS FOR THE BENEFIT OF THE MINOR CHILD OR CHILDREN UNDER CERTAIN CIRCUMSTANCES; TO AMEND SECTION 93-9-21, MISSISSIPPI CODE OF 1972, TO CLARIFY WHEN THE COURT SHALL GRANT GENETIC TESTING WHERE PATERNITY HAS NOT BEEN ESTABLISHED; TO AMEND SECTIONS 93-9-9 AND 93-9-28, MISSISSIPPI CODE OF 1972, TO REVISE THE AMOUNT OF TIME IN WHICH A PERSON IS ALLOWED TO RESCIND AN ACKNOWLEDGEMENT OF PATERNITY; TO AMEND SECTION 43-19-34, MISSISSIPPI CODE OF 1972, TO DELETE THE REPEALER OR THE PROVISION CONCERNING STIPULATED AGREEMENTS FOR MODIFICATION OF SUPPORT ORDERS AND TO MANDATE THE DEPARTMENT OF HUMAN SERVICES TO NOTIFY BOTH PARENTS OF THE RIGHT TO REQUEST A REVIEW EVERY 3 YEARS AS PROVIDED BY FEDERAL REQUIREMENTS; TO AMEND SECTION 43-19-46, MISSISSIPPI CODE OF 1972, TO DELETE THE REPEALER ON THAT SECTION; AND FOR RELATED PURPOSES.

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

SECTION 1. The following shall be codified as Section

93-9-10, Mississippi Code of 1972:

93-9-10. **Disestablishment of paternity.** (1) This section establishes circumstances under which a legal father may disestablish paternity and terminate a child support obligation when the legal father is not the biological father of the child. To disestablish paternity and terminate a child support obligation, the legal father must file a petition in the court having jurisdiction over the child support obligation. The petition must be served on the mother or other legal guardian or custodian of the child. If the Department of Human Services is or

has been a party to the establishment of paternity or collection of child support, the Attorney General of the State of Mississippi must be served with a copy of the petition. The petition must include:

(a) An affidavit executed by the petitioner that newly discovered evidence relating to the paternity of the child has come to the petitioner's knowledge since the initial paternity determination.

(b) (i) The results of a scientific test or tests that are generally acceptable to the scientific community to show a probability of paternity, administered within one (1) year before the filing of the petition, which results indicate that the legal father is excluded as being the biological father of the child, or (ii) an affidavit executed by the petitioner stating that he did not have access to the child to have the scientific testing performed before the filing of the petition. A petitioner who files such an affidavit can request in the petition that the court order the child and mother, if available, be tested.

(2) The court shall grant relief on a petition filed in accordance with subsection (1) of this section upon a finding by the court of all of the following:

(a) Newly discovered evidence relating to the paternity of the child has come to the petitioner's knowledge since the initial paternity determination.

(b) The scientific testing required in subsection (1)(b) of this section was properly conducted.

(c) The legal father ordered to pay child support has not adopted the child.

(d) The child was not conceived by artificial insemination while the legal father ordered to pay support and the child's mother were married.

(e) The legal father ordered to pay child support did not act to prevent the biological father of the child from asserting his parental rights with respect to the child.

(3) Notwithstanding subsection (2) of this section, a court shall not set aside the paternity determination or child support order if the legal father engaged in any of the following conduct:

(a) Married or cohabited with the mother of the child and voluntarily assumed the parental obligation and duty to support the child after having knowledge that he is not the biological father of the child;

(b) Consented to be named as the biological father on the child's birth certificate and signed the birth certificate application or executed a simple acknowledgment of paternity and failed to withdraw consent or acknowledgment within the time provided for by law in Sections 93-9-9 and 93-9-28, unless he can prove fraud, duress or material mistake of fact;

(c) Signed a stipulated agreement of paternity that has been approved by order of the court;

(d) Signed a stipulated agreement of support that has been approved by order of the court after having knowledge that he is not the biological father of the child;

(e) Been named as the legal father or ordered to pay support by valid order of the court after having declined genetic testing;

(f) Failed to appear for a scheduled genetic testing draw pursuant to a valid court order compelling him to submit to genetic testing.

(4) If the petitioner fails to make the requisite showing required by this section, the court shall deny the petition.

(5) Relief granted pursuant to this section is limited to the issues of prospective child support payments, past-due child support payments, termination of parental rights, custody, and visitation privileges as otherwise provided by law. This section

shall not be construed to create a cause of action to recover child support paid before the filing of the petition to disestablish paternity.

(6) The duty to pay child support and other legal obligations for the child shall not be suspended while the petition is pending except for good cause. However, the court may order that amounts paid as child support be held by the court or the Department of Human Services until final determination of paternity has been made.

(7) The party requesting genetic testing shall pay any fees associated with the testing.

(8) In any action brought pursuant to this section, the court on its own motion, or on the motion of any party, may order the biological mother and child, through the child's legal guardian or custodian, to submit to genetic testing.

(9) If the relief sought under this petition is not granted by the court, the petitioner shall be assessed the court costs, genetic testing fees and reasonable attorney fees.

SECTION 2. Section 93-11-71, Mississippi Code of 1972, is amended 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 disestablishment of paternity granted pursuant to Section 93-9-10 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) A parent who receives social security disability insurance payments who is liable for a child support arrearage and whose disability insurance benefits provide for the payment of past due disability insurance benefits for the support of the minor child or children for whom the parent owes a child support arrearage shall receive credit toward the arrearage for the payment or payments for the benefit of the minor child or children if the arrearage accrued after the date of disability onset as determined by the Social Security Administration.

* * *

SECTION 3. Section 93-11-101, Mississippi Code of 1972, is amended 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.

(1) "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.

* * *

SECTION 4. Section 93-11-103, Mississippi Code of 1972, is amended 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.

* * *

SECTION 5. Section 93-9-21, Mississippi Code of 1972, is amended as follows:

93-9-21. (1) (a) In all cases brought pursuant to Title IV-D of the Social Security Act, upon sworn documentation by the mother, putative father, or the Department of Human Services alleging paternity, the department may issue an administrative order for paternity testing which requires the mother, putative father and minor child to submit themselves for paternity testing. The department shall send the putative father a copy of the Administrative Order and a Notice for Genetic Testing which shall include the date, time and place for collection of the putative father's genetic sample. The department shall also send the putative father a Notice and Complaint to Establish Paternity which shall specify the date and time certain of the court hearing 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 upon the putative father in accordance with Rule 4 of the Mississippi Rules of Civil Procedure insofar as service of an administrative order or notice is concerned.

(b) If the putative father does not submit to genetic testing, the court shall, without further notice, on the date and time previously set through the notice for hearing, review the documentation of the refusal to submit to genetic testing and make a determination as to whether the complaint to establish paternity should be granted. The refusal to submit to such testing shall

create a rebuttable presumption of an admission to paternity by the putative father.

(c) In any case in which the Department of Human Services orders genetic testing, the department is required to advance costs of such tests subject to recoupment from the alleged father if paternity is established. If either party challenges the original test results, the department shall order additional testing at the expense of the challenging party.

(2) In any case in which paternity has not been established, the court, on its own motion or on motion of the plaintiff or the defendant, shall order the mother, the alleged father and the child or children to submit to genetic tests and any other tests which reasonably prove or disprove the probability of paternity. If paternity has been previously established, the court shall only order genetic testing pursuant to Section 93-9-10.

If any party refuses to submit to such tests, the court may resolve the question of paternity against such party or enforce its order for genetic testing as the rights of others and the interest of justice require.

(3) Any party calling a witness or witnesses for the purpose of testifying that they had sexual intercourse with the mother at any possible time of conception of the child whose paternity is in question shall provide all other parties with the name and address of the witness at least twenty (20) days before the trial. If a witness is produced at the hearing for the purpose provided in this subsection but the party calling the witness failed to provide the twenty-day notice, the court may adjourn the proceeding for the purpose of taking a genetic test of the witness before hearing the testimony of the witness if the court finds that the party calling the witness acted in good faith.

(4) The court shall ensure that all parties are aware of their right to request genetic tests under this section.

(5) (a) Genetic tests shall be performed by a laboratory selected from the approved list as prepared and maintained by the Department of Human Services.

(b) The Department of Human Services shall publicly issue a request for proposals, and such requests for proposals when issued shall contain terms and conditions relating to price, technology and such other matters as are determined by the department to be appropriate for inclusion or required by law. After responses to the request for proposals have been duly received, the department shall select the lowest and best bid(s) on the basis of price, technology and other relevant factors and from such proposals, but not limited to the terms thereof, negotiate and enter into contract(s) with one or more of the laboratories submitting proposals. The department shall prepare a list of all laboratories with which it has contracted on these terms. The list and any updates thereto shall be distributed to all chancery clerks. To be eligible to appear on the list, a laboratory must meet the following requirements:

(i) The laboratory is qualified to do business within the State of Mississippi;

(ii) The laboratory can provide test results in less than fourteen (14) days; and

(iii) The laboratory must have participated in the competitive procurement process.

SECTION 6. Section 93-9-9, Mississippi Code of 1972, is amended as follows:

93-9-9. (1) Paternity may be determined upon the petition of the mother, or father, the child or any public authority chargeable by law with the support of the child; provided that such an adjudication after the death of the defendant must be made only upon clear and convincing evidence. If paternity has been lawfully determined, or has been acknowledged in writing according to the laws of this state, the liabilities of the noncustodial

parent may be enforced in the same or other proceedings by the custodial parent, the child, or any public authority which has furnished or may furnish the reasonable expenses of pregnancy, confinement, education, necessary support and maintenance, and medical or funeral expenses for the custodial parent or the child. The trier of fact shall receive without the need for third-party foundation testimony certified, attested or sworn documentation as evidence of (a) childbirth records; (b) cost of filing fees; (c) court costs; (d) services of process fees; (e) mailing cost; (f) genetic tests and testing fees; (g) the department's attorney's fees; (h) 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 costs of prenatal care, birthing, postnatal care and any other medical expenses incurred by the child or by the mother as a consequence of the mother's pregnancy or delivery; and (i) funeral expenses. All costs and fees shall be ordered paid to the Department of Human Services in all cases successfully prosecuted with a minimum of Two Hundred Fifty Dollars (\$250.00) in attorney's fees or an amount determined by the court without submitting an affidavit. Proceedings may be instituted at any time until such child attains the age of twenty-one (21) years unless the child has been emancipated as provided in Section 93-5-23 and Section 93-11-65. In the event of court-determined paternity, the surname of the child shall be that of the father, unless the judgment specifies otherwise.

(2) If the alleged father in an action to determine paternity to which the Department of Human Services is a party fails to appear for a scheduled hearing after having been served with process or subsequent notice consistent with the Rules of Civil Procedure, his paternity of the child(ren) shall be established by the court if an affidavit sworn to by the mother averring the alleged father's paternity of the child has accompanied the complaint to determine paternity. Said affidavit

shall constitute sufficient grounds for the court's finding of the alleged father's paternity without the necessity of the presence or testimony of the mother at the said hearing. The court shall, upon motion by the Department of Human Services, enter a judgment of paternity. Any person who shall willfully and knowingly file a false affidavit shall be subject to a fine of not more than One Thousand Dollars (\$1,000.00).

(3) Upon application of both parents to the State Board of Health and receipt by the State Board of Health of a sworn acknowledgement of paternity executed by both parents subsequent to the birth of a child born out of wedlock, the birth certificate of the child shall be amended to show such paternity if paternity is not shown on the birth certificate. Upon request of the parents for the legitimization of a child under this section, the surname of the child shall be changed on the certificate to that of the father.

(4) (a) A signed voluntary acknowledgment of paternity is subject to the right of any signatory to rescind the acknowledgment within the earlier of:

(i) One (1) year; or

(ii) The date of a judicial proceeding relating to the child, including a proceeding to establish a support order, in which the signatory is a party.

(b) After the expiration of the one-year period specified in subsection (4) (a) (i) of this section, a signed voluntary acknowledgment of paternity may be challenged in court only on the basis of fraud, duress or material mistake of fact, with the burden of proof upon the challenger; the legal responsibilities, including child support obligations, of any signatory arising from the acknowledgment may not be suspended during the pendency of the challenge, except for good cause shown.

(c) During the one-year time period specified in subsection (4) (a) (i) of this section, the alleged father may

request genetic testing through the Department of Human Services in accordance with the provisions of Section 93-9-21.

(d) The one-year time limit, specified in subsection (4)(a)(i) of this section, for the right of the alleged father to rescind the signed voluntary acknowledgement of paternity shall be tolled from the date the alleged father files his formal application for genetic testing with the Department of Human Services until the date the test results are revealed to the alleged father by the department. After the one-year time period has expired, not including any period of time tolled for the purpose of acquiring genetic testing through the department, the provisions of subsection (4)(b) of this section shall apply.

SECTION 7. Section 93-9-28, Mississippi Code of 1972, is amended as follows:

93-9-28. (1) The Mississippi State Department of Health in cooperation with the Mississippi Department of Human Services shall develop a form and procedure which may be used to secure a voluntary acknowledgement of paternity from the mother and father of any child born out of wedlock in Mississippi. The form shall clearly state on its face that the execution of the acknowledgement of paternity shall result in the same legal effect as if the father and mother had been married at the time of the birth of the child. The form shall also clearly indicate the right of the alleged father to request genetic testing through the Department of Human Services within the one-year time period specified in subsection (2)(a)(i) of this section and shall state the adverse effects and ramifications of not availing himself of this one-time opportunity to definitively establish the paternity of the child. When such form has been completed according to the established procedure and the signatures of both the mother and father have been notarized, then such voluntary acknowledgement shall constitute a full determination of the legal parentage of the child. The completed voluntary acknowledgement of paternity

shall be filed with the Bureau of Vital Statistics of the Mississippi State Department of Health. The name of the father shall be entered on the certificate of birth upon receipt of the completed voluntary acknowledgement.

(2) (a) A signed voluntary acknowledgment of paternity is subject to the right of any signatory to rescind the acknowledgment within the earlier of:

(i) One (1) year; or

(ii) The date of a judicial proceeding relating to the child, including a proceeding to establish a support order, in which the signatory is a party.

(b) After the expiration of the one-year period specified in subsection (2)(a)(i) of this section, a signed voluntary acknowledgment of paternity may be challenged in court only on the basis of fraud, duress, or material mistake of fact, with the burden of proof upon the challenger; the legal responsibilities, including child support obligations, of any signatory arising from the acknowledgment may not be suspended during the pendency of the challenge, except for good cause shown.

(c) During the one-year time period specified in subsection (2)(a)(i) of this section, the alleged father may request genetic testing through the Department of Human Services in accordance with the provisions of Section 93-9-21.

(d) The one-year time limit, specified in subsection (2)(a)(i) of this section, for the right of the alleged father to rescind the signed voluntary acknowledgement of paternity shall be tolled from the date the alleged father files his formal application for genetic testing with the Department of Human Services until the date the test results are revealed to the alleged father by the department. After the one-year time period has expired, not including any period of time tolled for the purpose of acquiring genetic testing through the department, the provisions of subsection (2)(b) of this section shall apply.

(3) The Mississippi State Department of Health and the Mississippi Department of Human Services shall cooperate to establish procedures to facilitate the voluntary acknowledgement of paternity by both father and mother at the time of the birth of any child born out of wedlock. Such procedures shall establish responsibilities for each of the departments and for hospitals, birthing centers, midwives, and/or other birth attendants to seek and report voluntary acknowledgements of paternity. In establishing such procedures, the departments shall provide for obtaining the social security account numbers of both the father and mother on voluntary acknowledgements.

(4) Upon the birth of a child out of wedlock, the hospital, birthing center, midwife or other birth attendant shall provide an opportunity for the child's mother and natural father to complete an acknowledgement of paternity by giving the mother and natural father the appropriate forms and information developed through the procedures established in subsection (3). The hospital, birthing center, midwife or other birth attendant shall be responsible for providing printed information, and audio visual material if available, related to the acknowledgement of paternity, and shall be required to provide notary services needed for the completion of acknowledgements of paternity. The information described above shall be provided to the mother and natural father, if present and identifiable, within twenty-four (24) hours of birth or before the mother is released. Such information, including forms, brochures, pamphlets, video tapes and other media, shall be provided at no cost to the hospital, birthing center or midwife by the Mississippi State Department of Health, the Department of Human Services or other appropriate agency.

SECTION 8. 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, the Department of Human Services shall notify both parents of their right to request a review, and 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. If a recipient of Title IV-D services receives TANF, the Department of Human Services shall conduct a review every three (3) years and, after a determination of appropriateness, shall seek an adjustment to a support order according to the guidelines under Section 43-19-101. 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.

* * *

SECTION 9. Section 43-19-46, Mississippi Code of 1972, is amended as follows:

43-19-46. (1) Each employer paying wages, salary or commission and doing business in Mississippi shall report to the

Directory of New Hires within the Mississippi Department of Human Services:

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

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

(2) Employers shall report, by mailing or by other means authorized by the Department of Human Services, a copy of the employee's W-4 form or its equivalent that will result in timely reporting. Each employer shall submit reports within fifteen (15) days of the hiring, rehiring or return to work of the employee. The report shall contain:

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

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

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

(3) The department shall retain the information, which shall be forwarded to the federal registry of new hires.

(4) The Department of Human Services may operate the program, may enter into a mutual agreement with the Mississippi Department of Employment Security or the Department of Revenue, or both, for the operation of the Directory of New Hires Program, or the Department of Human Services may contract for that service, in which case the department shall maintain administrative control of the program.

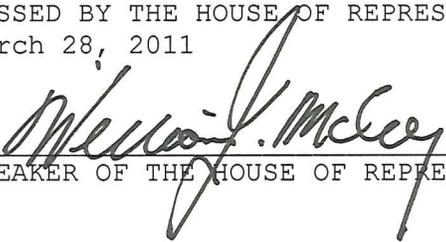
(5) In cases in which an employer fails to report information, as required by this section, an administratively levied civil penalty in an amount not to exceed Five Hundred

Dollars (\$500.00) shall apply if the failure is the result of a conspiracy between the employer and employee to not supply the required report or to supply a false or incomplete report. The penalty shall otherwise not exceed Twenty-five Dollars (\$25.00). Appeal shall be as provided in Section 43-19-58.

* * *

SECTION 10. This act shall take effect and be in force from and after July 1, 2011.

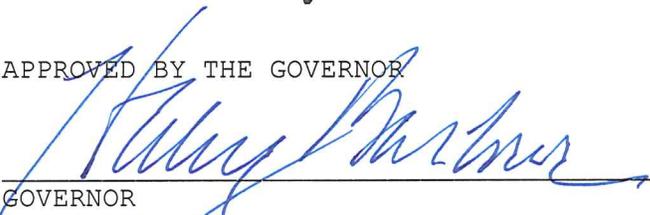
PASSED BY THE HOUSE OF REPRESENTATIVES
March 28, 2011


SPEAKER OF THE HOUSE OF REPRESENTATIVES

PASSED BY THE SENATE
March 28, 2011


PRESIDENT OF THE SENATE

APPROVED BY THE GOVERNOR


GOVERNOR

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