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Chapter No. 552
12/HR12/R1686SG
QP / CST

HOUSE BILL NO. 1157

Originated in House _____ Clerk

HOUSE BILL NO. 1157

AN ACT TO AMEND SECTION 43-19-34, MISSISSIPPI CODE OF 1972, TO CLARIFY THE METHOD OF REQUESTING A MODIFICATION OF A CHILD SUPPORT ORDER ENFORCED BY THE DEPARTMENT OF HUMAN SERVICES; TO AMEND SECTION 43-19-101, MISSISSIPPI CODE OF 1972, TO CLARIFY THAT ALL CHILD SUPPORT ORDERS SHALL INCLUDE NOTICE TO THE OBLIGATED PARENT'S EMPLOYER THAT MEDICAL SUPPORT FOR THE CHILD HAS BEEN ORDERED; TO AMEND SECTION 43-19-103, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT PAYMENT OF CHILD CARE EXPENSES BY THE OBLIGEE OVERCOMES THE PRESUMPTION THAT CHILD SUPPORT GUIDELINES ARE APPROPRIATE; AND FOR RELATED PURPOSES.

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

SECTION 1. 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, * * * 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 2. Section 43-19-101, Mississippi Code of 1972, is amended as follows:

43-19-101. (1) The following child support award guidelines shall be a rebuttable presumption in all judicial or administrative proceedings regarding the awarding or modifying of child support awards in this state:

Number Of Children Due Support	Percentage Of Adjusted Gross Income That Should Be Awarded For Support
1	14%
2	20%
3	22%
4	24%
5 or more	26%

(2) The guidelines provided for in subsection (1) of this section apply unless the judicial or administrative body awarding or modifying the child support award makes a written finding or specific finding on the record that the application of the guidelines would be unjust or inappropriate in a particular case as determined under the criteria specified in Section 43-19-103.

(3) The amount of "adjusted gross income" as that term is used in subsection (1) of this section shall be calculated as follows:

(a) Determine gross income from all potential sources that may reasonably be expected to be available to the absent parent including, but not limited to, the following: wages and salary income; income from self employment; income from commissions; income from investments, including dividends, interest income and income on any trust account or property; absent parent's portion of any joint income of both parents; workers' compensation, disability, unemployment, annuity and retirement benefits, including an individual retirement account (IRA); any other payments made by any person, private entity, federal or state government or any unit of local government; alimony; any income earned from an interest in or from inherited property; any other form of earned income; and gross income shall exclude any monetary benefits derived from a second household, such as income of the absent parent's current spouse;

(b) Subtract the following legally mandated deductions:

(i) Federal, state and local taxes. Contributions to the payment of taxes over and beyond the actual liability for the taxable year shall not be considered a mandatory deduction;

(ii) Social security contributions;

(iii) Retirement and disability contributions except any voluntary retirement and disability contributions;

(c) If the absent parent is subject to an existing court order for another child or children, subtract the amount of that court-ordered support;

(d) If the absent parent is also the parent of another child or other children residing with him, then the court may subtract an amount that it deems appropriate to account for the needs of said child or children;

(e) Compute the total annual amount of adjusted gross income based on paragraphs (a) through (d), then divide this amount by twelve (12) to obtain the monthly amount of adjusted gross income.

Upon conclusion of the calculation of paragraphs (a) through (e), multiply the monthly amount of adjusted gross income by the appropriate percentage designated in subsection (1) to arrive at the amount of the monthly child support award.

(4) In cases in which the adjusted gross income as defined in this section is more than Fifty Thousand Dollars ($50,000.00) or less than Five Thousand Dollars ($5,000.00), the court shall make a written finding in the record as to whether or not the application of the guidelines established in this section is reasonable.

(5) The Department of Human Services shall review the appropriateness of these guidelines beginning January 1, 1994, and every four (4) years thereafter and report its findings to the Legislature no later than the first day of the regular legislative session of that year. The Legislature shall thereafter amend these guidelines when it finds that amendment is necessary to ensure that equitable support is being awarded in all cases involving the support of minor children.

(6) All orders involving support of minor children, as a matter of law, shall include reasonable medical support. Notice to the obligated parent's employer that medical support has been ordered shall be on a form as prescribed by the Department of Human Services. In any case in which the support of any child is involved, the court shall make the following findings either on the record or in the judgment:

(a) The availability to all parties of health insurance coverage for the child(ren);

(b) The cost of health insurance coverage to all parties.

The court shall then make appropriate provisions in the judgment for the provision of health insurance coverage for the child(ren) in the manner that is in the best interests of the child(ren). If the court requires the custodial parent to obtain the coverage then its cost shall be taken into account in establishing the child support award. If the court determines that health insurance coverage is not available to any party or that it is not available to either party at a cost that is reasonable as compared to the income of the parties, then the court shall make specific findings as to such either on the record or in the judgment. In that event, the court shall make appropriate provisions in the judgment for the payment of medical expenses of the child(ren) in the absence of health insurance coverage.

SECTION 3. Section 43-19-103, Mississippi Code of 1972, is amended as follows:

43-19-103. The rebuttable presumption as to the justness or appropriateness of an award or modification of a child support award in this state, based upon the guidelines established by Section 43-19-101, may be overcome by a judicial or administrative body awarding or modifying the child support award by making a written finding or specific finding on the record that the application of the guidelines would be unjust or inappropriate in a particular case as determined according to the following criteria:

(a) Extraordinary medical, psychological, educational or dental expenses.

(b) Independent income of the child.

(c) The payment of both child support and spousal support to the obligee.

(d) Seasonal variations in one or both parents' incomes or expenses.

(e) The age of the child, taking into account the greater needs of older children.

(f) Special needs that have traditionally been met within the family budget even though the fulfilling of those needs will cause the support to exceed the proposed guidelines.

(g) The particular shared parental arrangement, such as where the noncustodial parent spends a great deal of time with the children thereby reducing the financial expenditures incurred by the custodial parent, or the refusal of the noncustodial parent to become involved in the activities of the child, or giving due consideration to the custodial parent's homemaking services.

(h) Total available assets of the obligee, obligor and the child.

(i) Payment by the obligee of child care expenses in order that the obligee may seek or retain employment, or because of the disability of the obligee.

(j) Any other adjustment which is needed to achieve an equitable result which may include, but not be limited to, a reasonable and necessary existing expense or debt.

SECTION 4. This act shall take effect and be in force from and after its passage.

PASSED BY THE HOUSE OF REPRESENTATIVES
April 30, 2012

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PASSED BY THE SENATE
May 1, 2012

PRESIDENT OF THE SENATE

APPROVED BY THE GOVERNOR

GOVERNOR

5-22-12 4:15 pm