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Chapter No. 354

13/SS01/R614PS

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# *SENATE BILL NO. 2210*

Originated in Senate

Liz Welch

Secretary

SENATE BILL NO. 2210

AN ACT TO AMEND SECTIONS 93-11-103 AND 93-11-105, MISSISSIPPI CODE OF 1972, TO DELETE THE REQUIREMENT THAT THE DEPARTMENT OF HUMAN SERVICES FILE EACH INDIVIDUAL ADMINISTRATIVE INCOME WITHHOLDING NOTICE WITH THE COURT; AND FOR RELATED PURPOSES.

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

**SECTION 1.** 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. \* \* \* 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 2.** Section 93-11-105, Mississippi Code of 1972, is amended as follows:

93-11-105. (1) Notwithstanding the provisions of Section 93-11-103, the Department of Human Services shall be authorized to implement administrative orders for withholding without the necessity of obtaining an order through judicial proceedings. The administrative order for withholding shall be implemented pursuant to a previously rendered order for support and shall be on a form prescribed by the Department of Human Services. Unless inconsistent with the provisions of this section, the order for

withholding shall be subject to the same requirements as provided in Sections 93-11-101 through 93-11-118.

(2) \* \* \* A copy of the administrative order shall be transmitted to the obligor by regular mail to the last-known address of the obligor.

(3) The order for withholding shall:

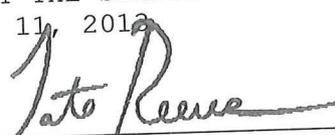
(a) Direct any payor to withhold an amount equal to the order for the current support obligation;

(b) Direct any payor to withhold an additional amount equal to twenty percent (20%) of the current support obligation, unless a different amount has been previously ordered by the court, until payment in full of any delinquency; and

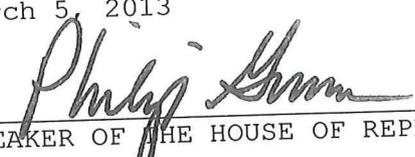
(c) Direct the payor not to withhold in excess of the amounts allowed under Section 303(b) of the Consumer Credit Protection Act, being 15 USCS 1673, as amended.

**SECTION 3.** This act shall take effect and be in force from and after July 1, 2013.

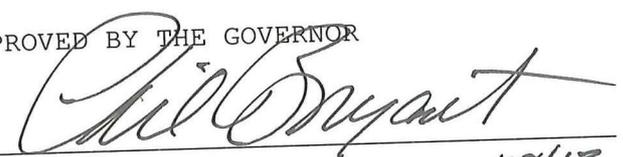
PASSED BY THE SENATE  
February 11, 2013

  
\_\_\_\_\_  
PRESIDENT OF THE SENATE

PASSED BY THE HOUSE OF REPRESENTATIVES  
March 5, 2013

  
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SPEAKER OF THE HOUSE OF REPRESENTATIVES

APPROVED BY THE GOVERNOR

  
\_\_\_\_\_  
GOVERNOR

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