By: Representative Ford (73rd)

To: Judiciary A

HOUSE BILL NO. 951
(As Passed the House)

AN ACT TO AMEND SECTION 43-19-48, MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE MISSISSIPPI DEPARTMENT OF HUMAN SERVICES TO USE ADDITIONAL METHODS OF COMMUNICATION TO SEND NOTICES RELATING TO ENCUMBRANCES OF ASSETS FOR CHILD SUPPORT TO FINANCIAL INSTITUTIONS IF ALLOWED BY THE FINANCIAL INSTITUTIONS; TO REVISE THE DEFINITION OF THE TERM "ACCOUNT" AS USED IN PROVISIONS RELATING TO THE ENCUMBERING OF ASSETS HELD BY A FINANCIAL INSTITUTION FOR PAST-DUE CHILD SUPPORT; AND FOR RELATED PURPOSES.

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

SECTION 1. Section 43-19-48, Mississippi Code of 1972, is amended as follows:

43-19-48. (1) The Department of Human Services and financial institutions doing business in the state are required to enter into agreements:

(a) To develop and operate a data match system, using automated data exchanges, in which each such financial institution is required to provide for each calendar quarter the name, record address, social security number or other taxpayer identification number, and other identifying information for each noncustodial parent who maintains an account at such institution and who owes past-due support, as identified by the Department of Human

Services by name and social security number or other taxpayer identification number;

(b) To encumber or surrender, as the case may be, assets held by such institution on behalf of any noncustodial parent who is subject to a child support lien; and

(c) To provide for payment of reasonable fees to financial institutions for conducting data matches, and for responding to other requests made pursuant to this section, with such fees not to exceed the actual costs incurred by such financial institutions.

(2) When the operation of such data match system results in the location of an account of a noncustodial parent who owes past-due support, or when such account is located through any means, the department may request and shall receive additional financial or other information including account numbers, names and social security numbers on record for accounts, and account balances, from any financial institution needed to establish, modify or enforce a support order.

(3) The department shall have the authority to encumber and seize assets held by an obligor in a financial institution doing business in Mississippi. Such assets shall be encumbered for either:

(a) A forty-five-day period; or

(b) Until such time as the issue of overdue support is resolved, provided the obligor has filed a petition for hearing

with a court of appropriate jurisdiction and the financial institution receives written notice thereof from the department before the end of the * * * forty-five-day period.

(4) Notice of such encumbrance initiated by the department shall be provided to the financial institution and to the obligor * * *.

(a) The department shall send, by certified mail or other approved types of communication allowed by the financial institution, notice to the financial institution with which the account is placed, directing that the financial institution shall:

(i) Immediately encumber funds in any account(s) in which the obligor has an interest, and to the extent of the debt indicated in the notice from the department;

(ii) Forward the encumbered funds to the department after either the forty-five-day period stated in subsection 3(a) of this section, or a determination favorable to the department by a court of appropriate jurisdiction; or

(iii) In the event the obligor prevails before the court, immediately release * * * the funds to the obligor.

(b) Notice shall be delivered to the obligor at the current mailing address as recorded by the department. Such notice shall be sent by regular mail at the commencement of the action described * * * in this section.

(c) The financial institution shall not disclose to an account holder or the depositor that the name of such person has

been received from or furnished to the department. The financial institution shall disclose to its account holders or its depositors that under the data match system, the department has the authority to request certain identifying information on the account holders' or the depositor's accounts.

(5) **Challenges to encumbrance of an account * * *.**

(a) Challenges to such levy for child support arrearage may be initiated only by the obligor or by an account holder of interest.

(b) Challenges shall be made by the filing of a petition for hearing by the obligor in a court of appropriate jurisdiction under Rule 81(d)(2) of the Mississippi Rules of Civil Procedure. Service upon the department shall be as prescribed by Rule 4(d)(5) of the Mississippi Rules of Civil Procedure.

(c) Grounds for the petition challenging the encumbrance shall be limited to:

(i) Mistakes of identity; or

(ii) Mistakes in amount of overdue support.

(6) **Liability of the financial institution and the department * * *.**

(a) Neither the department nor the financial institution shall be liable for any applicable early withdrawal penalties on the obligor's account(s).

(b) A financial institution shall be absolutely immune from any civil liability under any law or regulation to any person

for the disclosure of or failure to disclose any information pursuant to this chapter or for the escrow, encumbrance, seizure or surrender of any assets held by the financial institution in response to any notice issued by the Department of Human Services, the Child Support Unit or any contractors or agents thereof unless the disclosure or failure to disclose was willful or intentional, or for any other action taken in good faith to comply with the requirements of this chapter.

(7) Any amount encumbered and forwarded by the financial institution under this section shall not exceed the arrearage owed by the obligor.

(8) The provisions *** * *** in this section and any other relevant sections shall be employed equally by authorized contractors of the department to collect delinquent support payments.

(9) A financial institution shall not be liable under federal or state law to any person:

(a) For any disclosure of information to the Department of Human Services;

(b) For encumbering or forwarding any assets held by such financial institution in response to a notice of lien or levy;

(c) For any other action taken in good faith to comply with the requirements of subsection (1)(a) or (b) *** * *** of this section.

(10) **Definitions.** For purposes of this section:

(a) The term "financial institution" has the meaning given to such by Section 81-12-3 *** * *** and shall include, but not be limited to, credit unions, stock brokerages, public or private entities administering retirement, savings, annuities, life insurance and/or pension funds *** * ***.

(b) The term "account" means a *demand* deposit account, checking or negotiable withdrawal order account, savings account, time deposit account or money-market mutual fund account.

(11) Failure to comply with the provisions of this section or the willful rendering of false information shall subject the financial institution to a fine of not less than One Thousand Dollars ($1,000.00).

SECTION 2. This act shall take effect and be in force from and after July 1, 2021.