

Mississippi Divorce Laws

TITLE 93 DOMESTIC RELATIONS

CHAPTER 5 DIVORCE AND ALIMONY

§ 93-5-1. Causes for divorce.

Divorces from the bonds of matrimony may be decreed to the injured party for any one or more of the following twelve causes, viz:

First. Natural impotency.

Second. Adultery, unless it should appear that it was committed by collusion of the parties for the purpose of procuring a divorce, or unless the parties cohabited after a knowledge by complainant of the adultery.

Third. Being sentenced to any penitentiary, and not pardoned before being sent there.

Fourth. Wilful, continued and obstinate desertion for the space of one year.

Fifth. Habitual drunkenness.

Sixth. Habitual and excessive use of opium, morphine or other like drug.

Seventh. Habitual cruel and inhuman treatment.

Eighth. Insanity or idiocy at the time of marriage, if the party complaining did not know of such infirmity.

Ninth. Marriage to some other person at the time of the pretended marriage between the parties.

Tenth. Pregnancy of the wife by another person at the time of the marriage, if the husband did not know of such pregnancy.

Eleventh. Either party may have a divorce if they be related to each other within the degrees of kindred between whom marriage is prohibited by law.

Twelfth. Incurable insanity. But no divorce shall be granted upon this ground unless the insane party shall have been under regular treatment for insanity and causes thereof, confined in an institution for the insane for a period of at least three years immediately preceding the commencement of the action. Provided, however, that transfer of an insane party to his or her home for treatment or a trial visit on prescription or recommendation of a licensed physician, which treatment or trial visit proves unsuccessful after a bona fide effort by the complaining party to effect a cure, upon the reconfinement of the insane party in an institution for the insane, shall be regular treatment for insanity and causes thereof, and the period of time so consumed in seeking to effect a cure, or while on a trial visit home, shall be added to the period of actual confinement in an institution for the insane in computing the required period of three (3) years confinement immediately preceding the commencement of the action. No divorce shall be granted because of insanity until after a thorough examination of such insane person by two (2) physicians who are recognized authorities on mental diseases. One such physician shall be either the superintendent of the state hospital or the veterans hospital for the insane in which the patient is confined, or a member of the medical staff of such hospital who has had the patient in charge. Before incurable insanity can be successfully proven as a ground for divorce, it shall be necessary that both such physicians make affidavit that such patient is a mentally disturbed person at the time of the examination and both affidavits shall be made a part of the permanent record of the divorce proceedings and shall create the prima facie presumption of incurable insanity, such as would justify a divorce based thereon. Service of process shall be made on the superintendent of the hospital in which the defendant is a patient. In event the patient is in a hospital outside the state, process shall be served by publication, as in other cases of service by publication, together with the

sending of a copy by registered mail to the superintendent of said hospital. In addition thereto, process shall be served upon the next blood relative and guardian, if any. In event there is no legal guardian, the court shall appoint a guardian ad litem to represent the interest of the insane person. Such relative or guardian and superintendent of the institution shall be entitled to appear and be heard upon any and all issues. The status of the parties as to the support and maintenance of the insane person shall not be altered in any way by the granting of the divorce.

However, in the discretion of the chancery court, and in such cases as the court may deem it necessary and proper, before any such decree is granted on the ground of incurable insanity, the complainant, when ordered by the court, shall enter into bond, to be approved by the court, in such an amount as the court may think just and proper, conditioned for the care and keeping of such insane person during the remainder of his or her natural life, unless such insane person has a sufficient estate in his or her own right for such purpose.

§ 93-5-2. Divorce on grounds of irreconcilable differences.

(1) Divorce from the bonds of matrimony may be granted on the ground of irreconcilable differences, but only upon the joint complaint of the husband and wife or a complaint where the defendant has been personally served with process or where the defendant has entered an appearance by written waiver of process.

(2) If the parties provide by written agreement for the custody and maintenance of any children of that marriage and for the settlement of any property rights between the parties and the court finds that such provisions are adequate and sufficient, the agreement may be incorporated in the judgment, and such judgment may be modified as other judgments for divorce.

(3) If the parties are unable to agree upon adequate and sufficient provisions for the custody and maintenance of any children of that marriage or any property rights between them, they may consent to a divorce on the ground of irreconcilable differences and permit the court to decide the issues upon which they cannot agree. Such consent must be in writing, signed by both parties personally, must state that the parties voluntarily consent to permit the court to decide such issues, which shall be specifically set forth in such consent, and that the parties understand that the decision of the court shall be a binding and lawful judgment. Such consent may not be withdrawn by a party without leave of the court after the court has commenced any proceeding, including the hearing of any motion or other matter pertaining thereto. The failure or refusal of either party to agree as to adequate and sufficient provisions for the custody and maintenance of any children of that marriage or any property rights between the parties, or any portion of such issues, or the failure or refusal of any party to consent to permit the court to decide such issues, shall not be used as evidence, or in any manner, against such party. No divorce shall be granted pursuant to this subsection until all matters involving custody and maintenance of any child of that marriage and property rights between the parties raised by the pleadings have been either adjudicated by the court or agreed upon by the parties and found to be adequate and sufficient by the court and included in the judgment of divorce. Appeals from any orders and judgments rendered pursuant to this subsection may be had as in other cases in chancery court only insofar as such orders and judgments relate to issues that the parties consented to have decided by the court.

(4) Complaints for divorce on the ground of irreconcilable differences must have been on file for sixty (60) days before being heard. Except as otherwise provided in subsection (3) of this section, a joint complaint of husband and wife or a complaint where the defendant has been personally served with process or where the defendant has entered an appearance by written waiver of process, for divorce solely on the ground of irreconcilable differences, shall be taken as proved and a final judgment entered thereon, as in other cases and without proof or testimony in termtime or vacation, the provisions of Section 93-5-17 to the contrary notwithstanding.

(5) Except as otherwise provided in subsection (3) of this section, no divorce shall be granted on the ground of irreconcilable differences where there has been a contest or denial; provided, however, that a divorce may be granted on the grounds of irreconcilable differences where there has been a contest or denial, if the contest or denial has been withdrawn or cancelled by the party filing same by leave and order of the court.

(6) Irreconcilable differences may be asserted as a sole ground for divorce or as an alternate ground for divorce with any other cause for divorce set out in Section 93-5-1.

§ 93-5-3. Not mandatory to deny divorce because of recrimination.

If a complainant or cross-complainant in a divorce action shall prove grounds entitling him to a divorce, it shall not be mandatory on any chancellor to deny such party a divorce, even though the evidence might establish recrimination on the part of such complainant or cross-complainant.

§ 93-5-4. Offended spouse's failure to leave marital domicile or separate from offending spouse no impediment to divorce.

It shall be no impediment to a divorce that the offended spouse did not leave the marital domicile or separate from the offending spouse on account of the conduct of the offending spouse.

§ 93-5-5. Residence requirements for divorce.

The jurisdiction of the chancery court in suits for divorce shall be confined to the following cases:

(a) Where one (1) of the parties has been an actual bona fide resident within this state for six (6) months next preceding the commencement of the suit. If a member of the armed services of the United States is stationed in the state and residing within the state with his spouse, such person and his spouse shall be considered actual bona fide residents of the state for the purposes of this section, provided they were residing within the state at the time of the separation of the parties.

(b) In any case where the proof shows that a residence was acquired in this state with a purpose of securing a divorce, the court shall not take jurisdiction thereof, but dismiss the bill at the cost of complainant.

§ 93-5-7. Conduct of divorce proceedings.

The proceedings to obtain a divorce shall be by complaint in chancery, and shall be conducted as other suits in chancery, except that (1) the defendant shall not be required to answer on oath; (2) no judgment by default may be granted but a divorce may be granted on the ground of irreconcilable differences in termtime or vacation; (3) admissions made in the answer shall not be taken as evidence; (4) the clerk shall not set down on the issue docket any divorce case unless upon the request of one (1) of the parties; (5) the plaintiff may allege only the statutory language as cause for divorce in a separate paragraph in the complaint; provided, however, the defendant shall be entitled to discover any matter, not privileged, which is relevant to the issues raised by the claims or defenses of the other; (6) the court shall have full power in its discretion to grant continuances in such cases without the compliance by the parties with any of the requirements of law respecting continuances in other cases; and (7) in all cases, except complaints seeking a divorce on the ground of irreconcilable differences, the complaint must be accompanied with an affidavit of plaintiff that it is not filed by collusion with the defendant for the purpose of obtaining a divorce, but that the cause or causes for divorce stated in the complaint are true as stated.

§ 93-5-9. Minors as parties to divorce proceedings.

A married minor may bring or defend a suit for divorce, separate maintenance and support, temporary maintenance or support, custody of children, or any other action involving marital rights without the necessity of a next friend or guardian ad litem, and a judgment in such cases shall be as effective as if the minor were an adult.

§ 93-5-11. Filing of complaints.

All complaints, except those based solely on the ground of irreconcilable differences, must be filed in the county in which the plaintiff resides, if the defendant be a nonresident of this state, or be absent, so that process cannot be served; and the manner of making such parties defendants so as to authorize a judgment against them in other chancery cases, shall be observed. If the defendant

be a resident of this state, the complaint shall be filed in the county in which such defendant resides or may be found at the time, or in the county of the residence of the parties at the time of separation, if the plaintiff be still a resident of such county when the suit is instituted.

A complaint for divorce based solely on the grounds of irreconcilable differences shall be filed in the county of residence of either party where both parties are residents of this state. If one (1) party is not a resident of this state, then the complaint shall be filed in the county where the resident party resides.

§ 93-5-13. Guardian ad litem.

If the defendant be an infant or insane, the court may appoint a guardian ad litem for such defendant.

§ 93-5-15. Guardian for insane spouse may sue for divorce.

From and after March 15, 1934 any marital contract heretofore or hereafter solemnized by and under which parties have been duly and legally married, and one of the parties to said marriage contract has, or shall become insane to such an extent that it is necessary for a guardian to be appointed for such party, and the other party to such marital contract shall have committed any act which constitutes ground for divorce under the present laws, the guardian for such innocent or incompetent party to such contract of marriage shall have the right to file bill, as such guardian, in the name of his ward, for the dissolution of such marriage, in the same way and manner, and at the same place, and on the same process that said incompetent or insane person could have done, had he not lost his mind.

§ 93-5-17. Proceedings to be had in open court.

(1) The proceedings to obtain a divorce shall not be heard or considered nor a judgment of divorce entered except in open court. A chancellor may, in his discretion, hear or consider proceedings to obtain a divorce in vacation and make and enter judgments of divorce in the same manner as he may in other cases that may be heard in vacation pursuant to Section 9-5-91. Any judgment made or entered contrary to the provisions of this section shall be null and void.

(2) The chancellor in vacation may, upon reasonable notice, hear complaints for temporary alimony, temporary custody of children and temporary child support and make all proper orders and judgments thereon.

(3) As used in this section, the term "chancellor in vacation" shall include any chancellor who is holding court at any location in any county in his district.

§ 93-5-19. Witnesses; depositions.

In the trial of suits for divorce, witnesses may be summoned, and examined in open court, as in the trial of issues of fact in the circuit court, or depositions may be taken and read as in other cases and the parties shall be competent witnesses for or against each other.

§ 93-5-21. Exclusion of spectators from courtroom.

The court may, in its discretion, exclude all persons from the court room during the trial except the officers of the court, attorneys engaged in the case, parties to the suit and the witness being examined.

§ 93-5-23. Custody of children; alimony.

When a divorce shall be decreed from the bonds of matrimony, the court may, in its discretion, having regard to the circumstances of the parties and the nature of the case, as may seem equitable and just, make all orders touching the care, custody and maintenance of the children of the marriage, and also touching the maintenance and alimony of the wife or the husband, or any allowance to be made to her or him, and shall, if need be, require bond, sureties or other

guarantee for the payment of the sum so allowed. Orders touching on the custody of the children of the marriage shall be made in accordance with the provisions of Section 93-5-24. The court may afterwards, on petition, change the decree, and make from time to time such new decrees as the case may require. However, where proof shows that both parents have separate incomes or estates, the court may require that each parent contribute to the support and maintenance of the children of the marriage in proportion to the relative financial ability of each. In the event a legally responsible parent has health insurance available to him or her through an employer or organization that may extend benefits to the dependents of such parent, any order of support issued against such parent may require him or her to exercise the option of additional coverage in favor of such children as he or she is legally responsible to support.

Whenever the court has ordered a party to make periodic payments for the maintenance or support of a child, but no bond, sureties or other guarantee has been required to secure such payments, and whenever such payments as have become due remain unpaid for a period of at least thirty (30) days, the court may, upon petition of the person to whom such payments are owing, or such person's legal representative, enter an order requiring that bond, sureties or other security be given by the person obligated to make such payments, the amount and sufficiency of which shall be approved by the court. The obligor shall, as in other civil actions, be served with process and shall be entitled to a hearing in such case.

Whenever in any proceeding in the chancery court concerning the custody of a child a party alleges that the child whose custody is at issue has been the victim of sexual or physical abuse by the other party, the court may, on its own motion, grant a continuance in the custody proceeding only until such allegation has been investigated by the Department of Human Services. At the time of ordering such continuance the court may direct the party, and his attorney, making such allegation of child abuse to report in writing and provide all evidence touching on the allegation of abuse to the Department of Human Services. The Department of Human Services shall investigate such allegation and take such action as it deems appropriate and as provided in such cases under the Youth Court Law (being Chapter 21 of Title 43, Mississippi Code of 1972) or under the laws establishing family courts (being Chapter 23 of Title 43, Mississippi Code of 1972).

If after investigation by the Department of Human Services or final disposition by the youth court or family court allegations of child abuse are found to be without foundation, the chancery court shall order the alleging party to pay all court costs and reasonable attorney's fees incurred by the defending party in responding to such allegation.

The court may investigate, hear and make a determination in a custody action when a charge of abuse and/or neglect arises in the course of a custody action as provided in Section 43-21-151, and in such cases the court shall appoint a guardian ad litem for the child as provided under Section 43-21-121, who shall be an attorney. Unless the chancery court's jurisdiction has been terminated, all disposition orders in such cases for placement with the Department of Human Services shall be reviewed by the court or designated authority at least annually to determine if continued placement with the department is in the best interest of the child or public.

The duty of support of a child terminates upon the emancipation of the child. The court may determine that emancipation has occurred and no other support obligation exists when the child:

- (a) Attains the age of twenty-one (21) years, or
- (b) Marries, or
- (c) Discontinues full-time enrollment in school and obtains full-time employment prior to attaining the age of twenty-one (21) years, or
- (d) Voluntarily moves from the home of the custodial parent or guardian and establishes independent living arrangements and obtains full-time employment prior to attaining the age of twenty-one (21) years.

§ 93-5-24. Types of custody awarded by court; joint custody; no presumption in favor of maternal custody; access to information pertaining to child by noncustodial parent;

restrictions on custody by parent with history of perpetrating family violence; rebuttable presumption that such custody is not in the best interest of the child; factors in reaching determinations; visitation orders.

(1) Custody shall be awarded as follows according to the best interests of the child:

(a) Physical and legal custody to both parents jointly pursuant to subsections (2) through (7).

(b) Physical custody to both parents jointly pursuant to subsections (2) through (7) and legal custody to either parent.

(c) Legal custody to both parents jointly pursuant to subsections (2) through (7) and physical custody to either parent.

(d) Physical and legal custody to either parent.

(e) Upon a finding by the court that both of the parents of the child have abandoned or deserted such child or that both such parents are mentally, morally or otherwise unfit to rear and train the child the court may award physical and legal custody to:

(i) The person in whose home the child has been living in a wholesome and stable environment; or

(ii) Physical and legal custody to any other person deemed by the court to be suitable and able to provide adequate and proper care and guidance for the child.

In making an order for custody to either parent or to both parents jointly, the court, in its discretion, may require the parents to submit to the court a plan for the implementation of the custody order.

(2) Joint custody may be awarded where irreconcilable differences is the ground for divorce, in the discretion of the court, upon application of both parents.

(3) In other cases, joint custody may be awarded, in the discretion of the court, upon application of one or both parents.

(4) There shall be a presumption that joint custody is in the best interest of a minor child where both parents have agreed to an award of joint custody.

(5) (a) For the purposes of this section, "joint custody" means joint physical and legal custody.

(b) For the purposes of this section, "physical custody" means those periods of time in which a child resides with or is under the care and supervision of one (1) of the parents.

(c) For the purposes of this section, "joint physical custody" means that each of the parents shall have significant periods of physical custody. Joint physical custody shall be shared by the parents in such a way so as to assure a child of frequent and continuing contact with both parents.

(d) For the purposes of this section, "legal custody" means the decision-making rights, the responsibilities and the authority relating to the health, education and welfare of a child.

(e) For the purposes of this section, "joint legal custody" means that the parents or parties share the decision-making rights, the responsibilities and the authority relating to the health, education and welfare of a child. An award of joint legal custody obligates the parties to exchange information concerning the health, education and welfare of the minor child, and to confer with one another in the exercise of decision-making rights, responsibilities and authority.

An award of joint physical and legal custody obligates the parties to exchange information concerning the health, education and welfare of the minor child, and unless allocated, apportioned or decreed, the parents or parties shall confer with one another in the exercise of decision-making rights, responsibilities and authority.

(6) Any order for joint custody may be modified or terminated upon the petition of both parents or upon the petition of one (1) parent showing that a material change in circumstances has occurred.

(7) There shall be no presumption that it is in the best interest of a child that a mother be awarded either legal or physical custody.

(8) Notwithstanding any other provision of law, access to records and information pertaining to a minor child, including, but not limited to, medical, dental and school records, shall not be denied to a parent because the parent is not the child's custodial parent.

(9) (a) (i) In every proceeding where the custody of a child is in dispute, there shall be a rebuttable presumption that it is detrimental to the child and not in the best interest of the child to be placed in sole custody, joint legal custody or joint physical custody of a parent who has a history of perpetrating family violence. The court may find a history of perpetrating family violence if the court finds, by a preponderance of the evidence, one (1) incident of family violence that has resulted in serious bodily injury to, or a pattern of family violence against, the party making the allegation or a family household member of either party. The court shall make written findings to document how and why the presumption was or was not triggered.

(ii) This presumption may only be rebutted by a preponderance of the evidence.

(iii) In determining whether the presumption set forth in subsection (9) has been overcome, the court shall consider all of the following factors:

1. Whether the perpetrator of family violence has demonstrated that giving sole or joint physical or legal custody of a child to the perpetrator is in the best interest of the child because of the other parent's absence, mental illness, substance abuse or such other circumstances which affect the best interest of the child or children;

2. Whether the perpetrator has successfully completed a batterer's treatment program;

3. Whether the perpetrator has successfully completed a program of alcohol or drug abuse counseling if the court determines that counseling is appropriate;

4. Whether the perpetrator has successfully completed a parenting class if the court determines the class to be appropriate;

5. If the perpetrator is on probation or parole, whether he or she is restrained by a protective order granted after a hearing, and whether he or she has complied with its terms and conditions; and

6. Whether the perpetrator of domestic violence has committed any further acts of domestic violence.

(iv) The court shall make written findings to document how and why the presumption was or was not rebutted.

(b) (i) If custody is awarded to a suitable third person, it shall not be until the natural grandparents of the child have been excluded and such person shall not allow access to a violent parent except as ordered by the court.

(ii) If the court finds that both parents have a history of perpetrating family violence, but the court finds that parental custody would be in the best interest of the child, custody may be awarded solely to the parent less likely to continue to perpetrate family violence. In such a case, the court may mandate completion of a treatment program by the custodial parent.

(c) If the court finds that the allegations of domestic violence are completely unfounded, the chancery court shall order the alleging party to pay all court costs and reasonable attorney's fees incurred by the defending party in responding to such allegations.

(d) (i) A court may award visitation by a parent who committed domestic or family violence only if the court finds that adequate provision for the safety of the child and the parent who is a victim of domestic or family violence can be made.

(ii) In a visitation order, a court may take any of the following actions:

1. Order an exchange of the child to occur in a protected setting;
2. Order visitation supervised in a manner to be determined by the court;
3. Order the perpetrator of domestic or family violence to attend and complete to the satisfaction of the court a program of intervention for perpetrators or other designated counseling as a condition of visitation;
4. Order the perpetrator of domestic or family violence to abstain from possession or consumption of alcohol or controlled substances during the visitation and for twenty-four (24) hours preceding the visitation;
5. Order the perpetrator of domestic or family violence to pay a fee to defray the cost of supervised visitation;
6. Prohibit overnight visitation;
7. Require a bond from the perpetrator of domestic or family violence for the return and safety of the child; or
8. Impose any other condition that is deemed necessary to provide for the safety of the child, the victim of family or domestic violence, or other family or household member.

(iii) Whether or not visitation is allowed, the court may order the address of the child or the victim of family or domestic violence to be kept confidential.

(e) The court may refer but shall not order an adult who is a victim of family or domestic violence to attend counseling relating to the victim's status or behavior as a victim, individually or with the perpetrator of domestic or family violence, as a condition of receiving custody of a child or as a condition of visitation.

(f) If a court allows a family or household member to supervise visitation, the court shall establish conditions to be followed during visitation.

§ 93-5-25. Effect of judgment of divorce.

The judgment of divorce shall not render illegitimate the children begotten between the parties during lawful marriage; but if the judgment be rendered because one (1) of the parties was married to another at the time of the marriage or pretended marriage between the parties, it shall adjudge the marriage between the parties to have been invalid and void from the beginning and the issue thereof shall be illegitimate and subject to the disabilities of illegitimate children. And the judgment may provide, in the discretion of the court, that a party against whom a divorce is granted, because of adultery, shall not be at liberty to marry again; in which case such party shall remain in law as a married person. Provided, however, that after one (1) year, the court may remove the disability and permit the person to marry again, on petition and satisfactory evidence of reformation, or for good cause shown, on the part of the party so barred from remarriage; but the actions of the court under the foregoing proviso shall not be construed as affecting any judgment of divorce granted in any case where the discretion of the chancellor has been exercised in barring one (1) party from remarriage on account of adultery.

§ 93-5-26. Noncustodial parent's right of access to records and information pertaining to minor children.

Notwithstanding any other provisions of law, except those provisions protecting the confidentiality of adoption records and except for cases in which parental rights have been legally terminated, access to records and information pertaining to a minor child, including but not limited to medical, dental and school records, shall not be denied to a parent because the parent is not the child's custodial parent if such parent's parental rights have not been terminated by adoption or by a termination of parental rights proceeding.

§ 93-5-27. Marital rights cease with judgment of divorce.

In all cases of divorce from the bonds of matrimony, the marital rights shall cease with the judgment.

§ 93-5-29. Divorced persons not to cohabit.

If any person who shall be divorced on account of their being within the degrees prohibited by law, shall afterwards cohabit, they shall be liable to the pains and penalties provided by law against incest. If any persons who shall be divorced on account of a prior marriage, adultery, or other cause, shall afterwards cohabit, they shall be liable to all the pains provided by law against adultery.

§ 93-5-31. Judgment of divorce may be revoked.

The judgment of divorce from the bonds of matrimony may be revoked at any time by the court which granted it, under such regulations and restrictions as it may deem proper to impose, upon the joint application of the parties, and upon the production of satisfactory evidence of their reconciliation.

§ 93-5-33. Statistical requirements.

All complaints for divorce shall name the parties to the suit, when married, and the number and names of the living minor children born of the marriage. It shall be the duty of each chancery clerk in the state to make a report of each divorce granted in his county; and on forms furnished by the State Board of Health, to show the following information, as correctly as he is able to make such report: Names of parties; when married; state of residence; children under eighteen (18) in this family as of date couple last resided in same household; custody of children; and the page and book in which judgment is recorded. He shall certify to the said report and affix thereunto his seal, and he shall forward it to the State Board of Health within ten (10) days after adjournment of each term of court in his county. For his services in preparing and forwarding said records to the State Board of Health he shall receive the sum of Thirty-five Cents (35¢) for each completed record, to be taxed to costs in each divorce case as other fees are taxed.

CHAPTER 7 ANNULMENT OF MARRIAGE

§ 93-7-1. Annulment of void marriages.

All bigamous or incestuous marriages are void, and a declaration of nullity may be obtained at the suit of either party.

§ 93-7-3. Causes for annulment of marriages.

A marriage may be annulled for any one of the following causes existing at the time of the marriage ceremony, to wit:

- (a) Incurable impotency.

(b) Insanity or idiocy of either or both parties. Action of an insane spouse may be brought by guardian or in the absence thereof by next friend, provided suit be brought within six (6) months after marriage.

(c) Failure to comply with the provisions of Sections 93-1-5 through 93-1-9 when any marriage affected by such failure has not been followed by cohabitation.

Or, in the absence of ratification:

(d) When either of the parties to a marriage shall be incapable, from want of age or understanding, of consenting to any marriage, or shall be incapable from physical causes of entering into the marriage state, or where the consent of either party shall have been obtained by force or fraud, the marriage shall be void from the time its nullity shall be declared by a court of competent jurisdiction.

(e) Pregnancy of the wife by another person, if the husband did not know of such pregnancy.

Suits for annulment under subsections (d) and (e) shall be brought within six (6) months after the ground therefor is or should be discovered, and not thereafter.

The causes for annulment of marriage set forth in this section are intended to be new remedies and shall in no way affect the causes for divorce declared elsewhere to be the law of the State of Mississippi as they presently exist or as they may from time to time be amended.

§ 93-7-5. Legitimation of issue.

Except for incestuous marriages, the issue of the parties to a void marriage conceived subsequent to the date thereof is legitimate, whether the marriage be declared void because of a prior existing marriage, or is annulled for some other cause.

§ 93-7-7. Custody of children.

When an annulment shall be adjudged or a marriage declared void, the chancery court may, in its discretion, having regard to the circumstances of the parties and the nature of the case, as may seem equitable and just, make all orders touching the care, custody, and maintenance of the children of the marriage; and the court may, afterwards, on complaint, change the judgment and make from time to time such new judgment as the case may require.

§ 93-7-9. Filing of complaint.

The complaint for annulment shall be filed in the county where the defendant resides, or in the county where the marriage license was issued, or in the county where the plaintiff resides, if the defendant be a nonresident of this state.

§ 93-7-11. Jurisdiction; pleading; process.

The chancery courts of the State of Mississippi shall have jurisdiction to hear and determine all suits for annulment and all suits for annulment shall be tried in term time or vacation, and the same rules of pleading and procedure shall apply as in divorce cases, and the laws of process now in force in divorce cases in this state shall apply in all suits for annulment.

§ 93-7-13. Duty of court to make report.

It shall be the duty of the chancery clerk to make a report of each annulment granted in his county to the state board of health on forms furnished by the state board of health in the same manner as now required by law for reporting divorces.

CHAPTER 11 ENFORCEMENT OF SUPPORT OF DEPENDENTS

IN GENERAL.

§ 93-11-64. Use of social security numbers for locating parents.

(1) The Department of Human Services and its divisions, and any agency, office or registry established by the department, or which works in conjunction with the department, or is authorized to supply information to the department, may use Social Security numbers for the purpose of locating parents or alleged parents, establishing parentage, and establishing the amount of, modifying, or enforcing child support obligations.

(2) This section requires that the Social Security number of:

(a) Any applicant for a state-issued license be recorded on the application;

(b) Any individual who is subject to a divorce decree, support order, or paternity determination or acknowledgment be placed in the records relating to the matter; and

(c) Any individual who has died be placed in the records relating to the death and be recorded on the death certificate.

§ 93-11-65. Custody and support of minor children; additional remedies; temporary support awarded pending determination of parentage.

(1) (a) In addition to the right to proceed under Section 93-5-23, Mississippi Code of 1972, and in addition to the remedy of habeas corpus in proper cases, and other existing remedies, the chancery court of the proper county shall have jurisdiction to entertain suits for the custody, care, support and maintenance of minor children and to hear and determine all such matters, and shall, if need be, require bond, sureties or other guarantee to secure any order for periodic payments for the maintenance or support of a child. In the event a legally responsible parent has health insurance available to him or her through an employer or organization that may extend benefits to the dependents of such parent, any order of support issued against such parent may require him or her to exercise the option of additional coverage in favor of such children as he or she is legally responsible to support. Proceedings may be brought by or against a resident or nonresident of the State of Mississippi, whether or not having the actual custody of minor children, for the purpose of judicially determining the legal custody of a child. All actions herein authorized may be brought in the county where the child is actually residing, or in the county of the residence of the party who has actual custody, or of the residence of the defendant. Process shall be had upon the parties as provided by law for process in person or by publication, if they be nonresidents of the state or residents of another jurisdiction or are not found therein after diligent search and inquiry or are unknown after diligent search and inquiry; provided that the court or chancellor in vacation may fix a date in termtime or in vacation to which process may be returnable and shall have power to proceed in termtime or vacation. Provided, however, that if the court shall find that both parties are fit and proper persons to have custody of the children, and that either party is able to adequately provide for the care and maintenance of the children, and that it would be to the best interest and welfare of the children, then any such child who shall have reached his twelfth birthday shall have the privilege of choosing the parent with whom he shall live.

(b) An order of child support shall specify the sum to be paid weekly or otherwise. In addition to providing for support and education, the order shall also provide for the support of the child prior to the making of the order for child support, and such other expenses as the court may deem proper.

(c) The court may require the payment to be made to the custodial parent, or to some person or corporation to be designated by the court as trustee, but if the child or custodial parent is receiving public assistance, the Department of Human Services shall be made the trustee.

(d) The noncustodial parent's liabilities for past education and necessary support and maintenance and other expenses are limited to a period of one (1) year next preceding the commencement of an action.

(2) Provided further, that where the proof shows that both parents have separate incomes or estates, the court may require that each parent contribute to the support and maintenance of the children in proportion to the relative financial ability of each.

(3) Whenever the court has ordered a party to make periodic payments for the maintenance or support of a child, but no bond, sureties or other guarantee has been required to secure such payments, and whenever such payments as have become due remain unpaid for a period of at least thirty (30) days, the court may, upon petition of the person to whom such payments are owing, or such person's legal representative, enter an order requiring that bond, sureties or other security be given by the person obligated to make such payments, the amount and sufficiency of which shall be approved by the court. The obligor shall, as in other civil actions, be served with process and shall be entitled to a hearing in such case.

(4) When a charge of abuse or neglect of a child first arises in the course of a custody or maintenance action pending in the chancery court pursuant to this section, the chancery court may proceed with the investigation, hearing and determination of such abuse or neglect charge as a part of its hearing and determination of the custody or maintenance issue as between the parents, as provided in Section 43-21-151, notwithstanding the other provisions of the Youth Court Law. The proceedings in chancery court on the abuse or neglect charge shall be confidential in the same manner as provided in youth court proceedings, and the chancery court shall appoint a guardian ad litem in such cases, as provided under Section 43-21-121 for youth court proceedings, who shall be an attorney. Unless the chancery court's jurisdiction has been terminated, all disposition orders in such cases for placement with the Department of Human Services shall be reviewed by the court or designated authority at least annually to determine if continued placement with the department is in the best interest of the child or the public.

(5) Each party to a paternity or child support proceeding shall notify the other within five (5) days after any change of address. In addition, the noncustodial and custodial parent shall file and update, with the court and with the state case registry, information on that party's location and identity, including social security number, residential and mailing addresses, telephone numbers, photograph, driver's license number, and name, address and telephone number of the party's employer. This information shall be required upon entry of an order or within five (5) days of a change of address.

(6) In any case subsequently enforced by the Department of Human Services pursuant to Title IV-D of the Social Security Act, the court shall have continuing jurisdiction.

(7) In any subsequent child support enforcement action between the parties, upon sufficient showing that diligent effort has been made to ascertain the location of a party, due process requirements for notice and service of process shall be deemed to be met with respect to the party upon delivery of written notice to the most recent residential or employer address filed with the state case registry.

(8) The duty of support of a child terminates upon the emancipation of the child. The court may determine that emancipation has occurred and no other support obligation exists when the child:

(a) Attains the age of twenty-one (21) years, or

(b) Marries, or

(c) Discontinues full-time enrollment in school and obtains full-time employment prior to attaining the age of twenty-one (21) years, or

(d) Voluntarily moves from the home of the custodial parent or guardian and establishes independent living arrangements and obtains full-time employment prior to attaining the age of twenty-one (21) years.

(9) Upon motion of a party requesting temporary child support pending a determination of parentage, temporary support shall be ordered if there is clear and convincing evidence of paternity on the basis of genetic tests or other evidence, unless the court makes written findings of

fact on the record that the award of temporary support would be unjust or inappropriate in a particular case.

§ 93-11-67. Personal jurisdiction over nonresident defendants.

(1) In an action for child support, a court may exercise personal jurisdiction over and enter a judgment in personam against a defendant if personal service of process is made as provided below and if the parties had resided in a marital relationship with each other in this state for thirty (30) days and if the complainant has continuously resided in this state after the defendant has become a nonresident.

(2) The defendant shall be personally served with a summons and a copy of the petition in the manner prescribed by the law of the state or jurisdiction in which service is made or by any form of mail addressed to the defendant with a receipt showing personal delivery or by personal service outside this state or jurisdiction in the manner prescribed for service within this state.

(3) Proof of service outside this state or jurisdiction may be by affidavit of the individual who made service or in the manner prescribed by the law of this state or in the manner prescribed by the law of the state or jurisdiction in which service is made. If service is by mail, proof may be a receipt signed by the defendant or other evidence of personal delivery to the defendant.

§ 93-11-69. Provision of information to consumer reporting agency as to overdue support.

(1) As used in this section:

(a) "Noncustodial parent" means a parent from whom the Department of Human Services is collecting support payments, and shall have the same meaning as "absent parent."

(b) "Consumer reporting agency" means any person who, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and who uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.

(c) "Department" means the Department of Human Services.

(d) "Overdue support" means any payments that are ordered by any court to be paid by an absent parent for the support of a child that have remained unpaid for at least thirty (30) days after payment is due. Overdue support 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.

(2) The department shall make available to any consumer reporting agency a report of the amount of overdue support owed by an absent parent.

(3) Before any information regarding an absent parent's overdue support may be made available pursuant to subsection (2) of this section, a copy of the report shall be mailed to the absent parent at such parent's last known address and the absent parent shall be given the opportunity to contest the information contained in the report as follows:

(a) The absent parent may, within fifteen (15) days after such notice is mailed, contest the accuracy of the information contained in the report by filing with the department a brief written statement concerning the nature of the alleged inaccuracies.

(b) Upon receipt of such statement the department shall, within a reasonable amount of time, reexamine the information contained in the report.

(c) If upon such reexamination the information in the report is found to be inaccurate, the department shall correct the information and send a copy of such corrected information to the absent parent.

(d) If upon such reexamination the information contained in the report is found to be accurate, the department shall notify the absent parent of this fact.

(e) Within ten (10) days after a copy of the reexamined information contained in the report is mailed to the absent parent, such absent parent may again contest the accuracy of such information by filing a brief written statement concerning the alleged inaccuracies and the department shall clearly note in any report to the consumer reporting agency the fact that the information is disputed unless there are reasonable grounds to believe that the statement filed by the absent parent is frivolous or irrelevant.

(4) The fee charged by the department for furnishing a report pursuant to this section shall not exceed the actual cost of furnishing such report.

(5) The Child Support Unit of the department may provide overdue support information to consumer reporting agencies through an automated computer system free of charge and with notice to the defendant as required by Title IV-D of the Social Security Act and the implementing regulations.

§ 93-11-71. Judgment for overdue child support.

(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 which 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 said judgment may be commenced 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 paragraph (2), 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 which 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) 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.

ORDERS FOR WITHHOLDING

§ 93-11-101. Definitions.

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.

§ 93-11-103. Entry of order for withholding; content; copies; duration.

(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.

§ 93-11-105. Administrative orders.

(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) The administrative order shall be filed with the clerk by the department and a copy 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.

§ 93-11-111. Duties of payor; payments to obligee; fees.

(1) It shall be the duty of any payor who has been served with a copy of the order for withholding and an attached affidavit of accounting, a certified record of payments, or judgment for delinquency to deduct and pay over income as provided in this section. The payor shall deduct the amount designated in the order for withholding beginning with the next payment of income that is payable to the obligor after fourteen (14) days following service of the order and notice. The payor shall pay the amounts withheld to the department within seven (7) days of the date the obligor is paid in accordance with the order for withholding and in accordance with any later notification received redirecting payments. The department shall then forward those amounts to the obligee.

(2) For each intrastate withholding of income, the payor shall be entitled to receive a fee of Two Dollars (\$2.00) to be withheld from the income of the obligor in addition to the support payments, regardless of the number of payments the payor makes to the department. However, in all interstate withholding, the rules and laws of the state where the obligor works shall determine the payor's processing fee.

(3) The payor shall, unless otherwise notified by the department, withhold from the income of the obligor and forward to the department each month, an amount specified by the department not to exceed Fifteen Dollars (\$15.00) per month to defray the department's administrative costs incurred in receiving and distributing money withheld under Sections 93-11-101 through 93-11-119. The payor may pay such amount to the department in any manner determined by the payor to be convenient and may include that amount in checks to the department for amounts withheld pursuant to the order for withholding. This subsection (3) shall stand repealed on July 1, 2005.

(4) Regardless of the amount designated in the order for withholding and regardless of other fees imposed or amounts withheld under this section, the payor shall not deduct from the income of the

obligor in excess of the amounts allowed under Section 303(b) of the Consumer Credit Protection Act, being 15 USCS 1673, as amended.

(5) A payor may combine all amounts that he is required to withhold and pay to the department in one (1) payment; however, the payor must send to the department a list showing the amount of the payment attributable to each obligor.

(6) Whenever the obligor is no longer receiving income from the payor, the payor shall return a copy of the order for withholding to the department and shall forward the obligor's last known address and name and address of the obligor's new employer, if known, to the department. The payor shall cooperate in providing further information for the purpose of enforcing Sections 93-11-101 through 93-11-119.

(7) Withholding of income under this section shall be made without regard to any prior or subsequent garnishments, attachments, wage assignments or any other claims of creditors. Payment as required by the order for withholding shall be a complete defense by the payor against any claims of the obligor or his creditors as to the sum so paid.

(8) In cases in which the payor has been served more than one (1) order for withholding for the same obligor, the payor shall honor the orders on a pro rata basis to result in withholding an amount for each order that is in direct proportion to the percentage of the obligor's adjusted gross income that the order represents, and the payor shall honor all those withholdings to the extent that the total amount withheld does not exceed the maximum amount specified in subsection (1) of this section.

(9) No payor shall discharge, discipline, refuse to hire or otherwise penalize any obligor because of the duty to withhold income.

§ 93-11-113. Modification, suspension, or termination of orders.

(1) At any time, an obligor, obligee, the department or clerk of the court may petition the court to:

(a) Modify, suspend or terminate the order for withholding because of a modification, suspension or termination of the underlying order for support; or

(b) Modify the amount of income to be withheld to reflect payment in full of the delinquency by income withholding or otherwise; or

(c) Suspend the order for withholding because of inability to deliver income withheld to the obligee due to the obligee's failure to provide a mailing address or other means of delivery.

(2) The clerk shall serve on the payor, by first class mail or personal delivery, a copy of any order entered pursuant to this section that affects the duties of the payor.

(3) The order for withholding shall continue to be binding upon the payor until service of any order of the court entered under this section.

§ 93-11-115. Additional notice requirements; records, legal forms, and information.

(1) An obligee who is receiving income withholding payments under Sections 93-11-101 through 93-11-119 shall notify the department of any change of address within seven (7) days of such change.

(2) An obligee who is a recipient of public aid shall send a copy of any notice filed pursuant to Section 93-11-103 to the department.

(3) An obligor whose income is being withheld pursuant to Sections 93-11-101 through 93-11-119 shall notify the department and the clerk of the court of any new payor, within seven (7) days.

(4) When the department is no longer authorized to receive payments for the obligee, it shall, within seven (7) days, notify the payor and the clerk of the court.

(5) The department shall provide notice to the payor and the clerk of the court of any other support payment made, including, but not limited to, a set-off under federal and state law or partial payment of the delinquency.

(6) The department shall maintain complete, accurate and clear records of all payments and their disbursements. Certified copies of payment records maintained by the department shall, without further proof, be admitted into evidence in any legal proceedings under Sections 93-11-101 through 93-11-119.

(7) The department shall design suggested legal forms for proceeding under Sections 93-11-101 through 93-11-119 and shall make available to the courts such forms and informational materials which describe the procedures and remedies set forth herein for distribution to all parties in support actions.

§ 93-11-116. Order for withholding based upon support order from foreign jurisdiction; procedural requirements.

An obligee who seeks a wage withholding order based upon an order for support from a foreign jurisdiction, must comply with the provisions of Sections 93-12-1 through 93-12-19.

§ 93-11-117. Penalties.

(1) In cases in which a payor willfully fails to withhold or pay over income pursuant to a valid order for withholding, the following penalties shall apply:

(a) The payor shall be liable for a civil penalty of not more than:

(i) One Hundred Dollars (\$100.00); or

(ii) Five Hundred Dollars (\$500.00) in an instance where the failure to comply is the result of collusion between the payor and the obligor; and

(b) The court, upon due notice and hearing, shall enter judgment and direct the issuance of an execution for the total amount that the payor willfully failed to withhold or pay over.

(2) In cases in which a payor discharges, disciplines, refuses to hire or otherwise penalizes an obligor as prohibited by subsection (9) of Section 93-11-111, the court, upon due notice and hearing, shall fine the payor in an amount not to exceed Fifty Dollars (\$50.00).

(3) Any obligee, the department or obligor who willfully initiates a false proceeding under Sections 93-11-101 through 93-11-119 or who willfully fails to comply with the requirements of Sections 93-11-101 through 93-11-119 shall be punished as in cases of contempt of court.

§ 93-11-118. Fraudulent conveyance of assets by obligor.

(1) Indicia of fraud which create a prima facie case that an obligor transferred income or property to avoid payment of child support to an obligee or department on behalf of an obligee shall be as stated in Section 15-3-3, Mississippi Code of 1972.

(2) Remedies for such fraudulent conveyance shall include, but not be limited to, the setting aside of such conveyance.

(3) Penalties for such fraudulent conveyance shall be a fine of not more than One Thousand Dollars (\$1,000.00).

§ 93-11-119. Relation to other rights, remedies, duties, and penalties.

(1) The rights, remedies, duties and penalties created by Sections 93-11-101 through 93-11-119 are in addition to and not in substitution for any other rights, remedies, duties and penalties created by any other law.

(2) Nothing in Sections 93-11-101 through 93-11-119 shall be construed as invalidating any garnishment, attachment or assignment of wages or benefits instituted prior to July 1, 1985; provided, however, any such garnishment, attachment or assignment shall be subject to the priorities established under the provisions of subsection (3) of Section 93-11-111.

SUSPENSION OF STATE-ISSUED LICENSES, PERMITS OR REGISTRATIONS FOR NONCOMPLIANCE WITH CHILD SUPPORT ORDER

§ 93-11-151. Intent.

In addition to other requirements necessary for holding a license, an individual who is subject to an order to pay child support also is subject to the provisions of Sections 93-11-151 through 93-11-163.

§ 93-11-153. Definitions.

As used in Sections 93-11-151 through 93-11-163, the following words and terms shall have the meanings ascribed herein:

(a) "Licensing entity" or "entity" means any entity specified in Title 73, Professions and Vocations, of the Mississippi Code, and includes the Mississippi Department of Public Safety with respect to driver's licenses, the Mississippi State Tax Commission with respect to licenses for the sale of alcoholic beverages and other licenses or registration authorizing a person to engage in a business, the Mississippi Department of Wildlife, Fisheries and Parks with respect to hunting and fishing licenses, and any other state agency that issues a license authorizing a person to engage in a business, occupation or profession. For the purposes of this article, the Supreme Court shall be considered to be the licensing entity for attorneys.

(b) "License" means a license, certificate, permit, credential, registration, or any other authorization issued by a licensing entity that allows a person to engage in a business, occupation or profession, to operate a motor vehicle, to sell alcoholic beverages, or to hunt and fish.

(c) "Licensee" means any person holding a license issued by a licensing entity.

(d) "Order for support" means any judgment or order that provides for payments of a sum certain for the support of a child, whether it is temporary or final, and includes, but is not limited to, an order for reimbursement for public assistance or an order for making periodic payments on a support arrearage, or a sum certain due for a support arrearage.

(e) "Out of compliance with an order for support" means that the obligor is at least thirty (30) days in arrears or delinquent in making payments in full for current support, or in making periodic payments on a support arrearage.

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

(g) "Division" means the division within the department that is charged with the state administration of Title IV-D of the Social Security Act.

(h) "Delinquency" means any payments of a sum certain 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 of a sum certain ordered by any court to be paid for maintenance of a spouse that have remained unpaid for at least thirty (30) days.

§ 93-11-155. Procedures for the establishment, enforcement and collection of child support obligations.

(1) In the manner and form prescribed by the division, all licensing entities shall provide to the division, on at least a quarterly basis, information on licensees for use in the establishment, enforcement and collection of child support obligations including, but not limited to: name, address, Social Security number, sex, date of birth, employer's name and address, type of license, effective date of the license, expiration date of the license, and active or inactive license status. Whenever technologically feasible, the department and licensing entities shall seek to reach agreements to provide the information required by this section by way of electronic data media, including, but not limited to, on-line access and records on magnetic/optical disk or tape. In lieu of providing the licensing information to the division as outlined above and in the discretion of the licensing entity, the division shall provide the identity of the individual who is delinquent in support payments to the licensing entity who will then match that information with their records and provide the division with all necessary information for those individuals licensed by that entity.

(2) Any licensed attorney representing the party to whom support is due may submit to the division the name and record of accounting showing an arrearage of an individual who is out of compliance with an order for support which is not being enforced by the division under Title IV-D, and the division shall submit the name of such individual to the licensing entities who will match the name with their records in the same manner as provided in subsection (1) to provide the attorney with necessary information regarding licensees. The attorney applying for such information shall pay a fee not to exceed Twenty-five Dollars (\$25.00) for such service.

§ 93-11-157. Review of information.

(1) The division shall review the information received under Section 93-11-155 and any other information available to the division, and shall determine if a licensee is out of compliance with an order for support. If a licensee is out of compliance with the order for support, the division shall notify the licensee by first class mail that ninety (90) days after the licensee receives the notice of being out of compliance with the order, the licensing entity will be notified to immediately suspend the licensee's license unless the licensee pays the arrearage owing, according to the accounting records of the Mississippi Department of Human Services or the attorney representing the party to whom support is due, as the case may be, or enters into a stipulated agreement and agreed judgment establishing a schedule for the payment of the arrearage. The licensee shall be presumed to have received the notice five (5) days after it is deposited in the mail.

(2) Upon receiving the notice provided in subsection (1) of this section the licensee may:

(a) Request a review with the division; however, the issues the licensee may raise at the review are limited to whether the licensee is the person required to pay under the order for support and whether the licensee is out of compliance with the order for support; or

(b) Request to participate in negotiations with the division for the purpose of establishing a payment schedule for the arrearage.

(3) The division director or the designees of the division director may and, upon request of a licensee, shall negotiate with a licensee to establish a payment schedule for the arrearage. Payments made under the payment schedule shall be in addition to the licensee's ongoing obligation under the latest entered periodic order for support.

(4) Should the division and the licensee reach an agreement on a payment schedule for the arrearage, the division director shall submit to the court the stipulated agreement and agreed judgment containing the payment schedule which, upon the court's approval, is enforceable as any order of the court. If the court does not approve the stipulated agreement and agreed judgment, the court may require a hearing on a case-by-case basis for the judicial review of the payment schedule agreement.

(5) If the licensee and the division do not reach an agreement on a payment schedule for the arrearage, the licensee may move the court to establish a payment schedule. However, this action does not stay the license suspension.

(6) The notice given to a licensee that the licensee's license will be suspended in ninety (90) days must clearly state the remedies and procedures that are available to a licensee under this section.

(7) If at the end of the ninety (90) days the licensee has an arrearage according to the accounting records of the Mississippi Department of Human Services or the attorney representing the party to whom support is due, as the case may be, and the licensee has not entered into a stipulated agreement and agreed judgment establishing a payment schedule for the arrearage, the division shall immediately notify all applicable licensing entities in writing to suspend the licensee's license, and the licensing entities shall immediately suspend the license and shall within three (3) business days notify the licensee and the licensee's employer, where known, of the license suspension and the date of such suspension by certified mail return receipt requested. Within forty-eight (48) hours of receipt of a request in writing delivered personally, by mail or by electronic means, the department shall furnish to the licensee, licensee's attorney or other authorized representative a copy of the department's accounting records of the licensee's payment history. A licensing entity shall immediately reinstate the suspended license upon the division's notification of the licensing entities in writing that the licensee no longer has an arrearage or that the licensee has entered into a stipulated agreement and agreed judgment.

(8) Within thirty (30) days after a licensing entity suspends the licensee's license at the direction of the division under subsection (7) of this section, the licensee may appeal the license suspension to the chancery court of the county in which the licensee resides or to the Chancery Court of the First Judicial District of Hinds County, Mississippi, upon giving bond with sufficient sureties in the amount of Two Hundred Dollars (\$200.00), approved by the clerk of the chancery court and conditioned to pay any costs that may be adjudged against the licensee. Notice of appeal shall be filed in the office of the clerk of the chancery court. If there is an appeal, the appeal may, in the discretion of and on motion to the chancery court, act as a supersedeas of the license suspension. The department shall be the appellee in the appeal, and the licensing entity shall not be a party in the appeal. The chancery court shall dispose of the appeal and enter its decision within thirty (30) days of the filing of the appeal. The hearing on the appeal may, in the discretion of the chancellor, be tried in vacation. The decision of the chancery court may be appealed to the Supreme Court in the manner provided by the rules of the Supreme Court. In the discretion of and on motion to the chancery court, no person shall be allowed to practice any business, occupation or profession or take any other action under the authority of any license the suspension of which has been affirmed by the chancery court while an appeal to the Supreme Court from the decision of the chancery court is pending.

(9) If a licensee who has entered a stipulated agreement and agreed judgment for the payment of an arrearage under this section subsequently is out of compliance with an order for support, the division shall immediately notify the licensing entity to suspend the licensee's license, and the licensing entity shall immediately suspend the license without a hearing and shall within three (3) business days notify the licensee in writing of the license suspension. In the case of a license suspension under the provisions of this subsection, the procedures provided for under subsections (1) and (2) of this section are not required; however, the appeal provisions of subsection (8) of this section still apply. After suspension of the license, if the licensee subsequently enters into a stipulated agreement and agreed judgment or the licensee otherwise informs the division of compliance with the order for support, the division shall within seven (7) days notify in writing the licensing entity that the licensee is in compliance. Upon receipt of that notice from the division, a licensing entity shall immediately reinstate the license of the licensee and shall within three (3) business days notify the licensee of the reinstatement.

(10) Nothing in this section prohibits a licensee from filing a motion for the modification of an order for support or for any other applicable relief. However, no such action shall stay the license suspension procedure, except as may be allowed under subsection (8) of this section.

(11) If a license is suspended under the provisions of this section, the licensing entity is not required to refund any fees paid by a licensee in connection with obtaining or renewing a license.

(12) The requirement of a licensing entity to suspend a license under this section does not affect the power of the licensing entity to deny, suspend, revoke or terminate a license for any other reason.

(13) The procedure for suspension of a license for being out of compliance with an order for support, and the procedure for the reissuance or reinstatement of a license suspended for that purpose, shall be governed by this section and not by the general licensing and disciplinary provisions applicable to a licensing entity. Actions taken by a licensing entity in suspending a license when required by this section are not actions from which an appeal may be taken under the general licensing and disciplinary provisions applicable to the licensing entity. Any appeal of a license suspension that is required by this section shall be taken in accordance with the appeal procedure specified in subsection (8) of this section rather than any procedure specified in the general licensing and disciplinary provisions applicable to the licensing entity. If there is any conflict between any provision of this section and any provision of the general licensing and disciplinary provisions applicable to a licensing entity, the provisions of this section shall control.

(14) No license shall be suspended under this section until ninety (90) days after July 1, 1996. This ninety-day period shall be a one-time amnesty period in which any person who may be subject to license suspension under this article may comply with an order of support in order to avoid the suspension of any license.

(15) Any individual who fails to comply with a subpoena or warrant relating to paternity or child support proceedings after receiving appropriate notice may be subject to suspension or withholding of issuance of a license under this section.

§ 93-11-159. Interagency agreements.

The licensing entities subject to Sections 93-11-151 through 93-11-161 may establish an additional administrative fee not to exceed Twenty-five Dollars (\$25.00) to be paid by licensees who are out of compliance with an order of support and who are subject to the provisions of Sections 93-11-151 through 93-11-161 for the purpose of recovering costs of the licensing entities associated with the implementation of Sections 93-11-151 through 93-11-161.

§ 93-11-161. Adoption of regulations.

The department shall adopt regulations as necessary to carry out the provisions of Sections 93-11-151 through 93-11-161 and shall consult with licensing entities in developing these regulations.

§ 93-11-163. Suspension of license.

In addition to the procedures in Section 93-11-157, the court may, upon a finding that a defendant is delinquent for being out of compliance with an order for support, order the licensing entity as defined in Section 93-11-153(a) to suspend the license of the defendant. In its discretion, the court may stay such an order for a reasonable time to allow the defendant to purge himself of the delinquency. If a license is suspended under this section, the court may also order the licensing entity to reinstate the license when it is satisfied that the defendant has purged himself of the delinquency. Licensing entities shall treat a suspension under this section the same as a suspension under Section 93-11-157. Defendants whose license is suspended under this section shall be subject to any administrative fees established for reinstatement under Section 93-11-159.

CHAPTER 12 ENFORCEMENT OF CHILD SUPPORT ORDERS FROM FOREIGN JURISDICTIONS

§ 93-12-17. Voluntary order for withholding.

Any person who is the obligor in a support order of another jurisdiction may obtain a voluntary order of withholding by filing with the court a request for such withholding and a certified copy of the support order of a sister state. The court shall issue an order for withholding pursuant to Sections 93-12-1 et seq. Payment shall be made to the department.

§ 93-12-19. Application of state laws to actions and proceedings.

The laws of this state shall apply in all actions and proceedings concerning the issuance, enforcement and duration of an order for withholding issued by a court of this state, which is based upon a support order of another jurisdiction entered pursuant to Sections 93-12-1 et seq. The penalties contained in Section 93-11-117, Mississippi Code of 1972, shall apply to all orders for withholding issued pursuant to Sections 93-12-1 et seq.

CHAPTER 16 GRANDPARENTS' VISITATION RIGHTS

§ 93-16-1. Jurisdiction of court to grant grandparents visitation rights with minor child.

Any court of this state which is competent to decide child custody matters shall have jurisdiction to grant visitation rights with a minor child or children to the grandparents of such minor child or children as provided in this chapter.

§ 93-16-3. Who may petition for visitation rights; when; court in which to file petition.

(1) Whenever a court of this state enters a decree or order awarding custody of a minor child to one (1) of the parents of the child or terminating the parental rights of one (1) of the parents of a minor child, or whenever one (1) of the parents of a minor child dies, either parent of the child's parents who was not awarded custody or whose parental rights have been terminated or who has died may petition the court in which the decree or order was rendered or, in the case of the death of a parent, petition the chancery court in the county in which the child resides, and seek visitation rights with such child.

(2) Any grandparent who is not authorized to petition for visitation rights pursuant to subsection (1) of this section may petition the chancery court and seek visitation rights with his or her grandchild, and the court may grant visitation rights to the grandparent, provided the court finds:

(a) That the grandparent of the child had established a viable relationship with the child and the parent or custodian of the child unreasonably denied the grandparent visitation rights with the child; and

(b) That visitation rights of the grandparent with the child would be in the best interests of the child.

(3) For purposes of subsection (3) of this section, the term "viable relationship" means a relationship in which the grandparents or either of them have voluntarily and in good faith supported the child financially in whole or in part for a period of not less than six (6) months before filing any petition for visitation rights with the child or the grandparents have had frequent visitation including occasional overnight visitation with said child for a period of not less than one (1) year.

(4) Any petition for visitation rights under subsection (2) of this section shall be filed in the county where an order of custody as to such child has previously been entered. If no such custody order has been entered, then the grandparents' petition shall be filed in the county where the child resides or may be found. The court shall on motion of the parent or parents direct the grandparents to pay reasonable attorney's fees to the parent or parents in advance and prior to any hearing, except in cases in which the court finds that no financial hardship will be imposed upon the parents. The court may also direct the grandparents to pay reasonable attorney's fees to the parent or parents of the child and court costs regardless of the outcome of the petition.

§ 93-16-5. Parties to proceeding; discretion of court in granting, enforcing, modifying or terminating rights.

All persons required to be made parties in child custody proceedings or proceedings for the termination of parental rights shall be made parties to any proceeding in which a grandparent of a minor child or children seeks to obtain visitation rights with such minor child or children; and the court may, in its discretion, if it finds that such visitation rights would be in the best interest of the child, grant to a grandparent reasonable visitation rights with the child. Whenever visitation rights

are granted to a grandparent, the court may issue such orders as shall be necessary to enforce such rights and may modify or terminate such visitation rights for cause at any time.

§ 93-16-7. Application of chapter.

This chapter shall not apply to the granting of visitation rights to the natural grandparents of any child who has been adopted by order or decree of any court unless: (a) one (1) of the legal parents of such child is also a natural parent of such child; or (b) one (1) of the legal parents of such child was related to the child by blood or marriage prior to the adoption. This chapter shall apply to persons who become grandparents of a child by virtue of adoption.