

By: Formby

To: Judiciary A

HOUSE BILL NO. 704

1 AN ACT TO AMEND SECTIONS 93-5-23, 93-5-24 AND 93-11-65,
2 MISSISSIPPI CODE OF 1972, TO REQUIRE A CUSTODIAL PARENT TO NOTIFY
3 THE NONCUSTODIAL PARENT BEFORE LEAVING THE STATE; AND FOR RELATED
4 PURPOSES.

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

6 SECTION 1. Section 93-5-23, Mississippi Code of 1972, is
7 amended as follows:

8 93-5-23. When a divorce shall be decreed from the bonds of
9 matrimony, the court may, in its discretion, having regard to the
10 circumstances of the parties and the nature of the case, as may
11 seem equitable and just, make all orders touching the care,
12 custody and maintenance of the children of the marriage, and also
13 touching the maintenance and alimony of the wife or the husband,
14 or any allowance to be made to her or him, and shall, if need be,
15 require bond, sureties or other guarantee for the payment of the
16 sum so allowed. Orders touching on the custody of the children of
17 the marriage may be made in accordance with the provisions of
18 Section 93-5-24. The court may afterwards, on petition, change
19 the decree, and make from time to time such new decrees as the
20 case may require. However, where proof shows that both parents
21 have separate incomes or estates, the court may require that each
22 parent contribute to the support and maintenance of the children

23 of the marriage in proportion to the relative financial ability of
24 each. In the event a legally responsible parent has health
25 insurance available to him or her through an employer or
26 organization that may extend benefits to the dependents of such
27 parent, any order of support issued against such parent may
28 require him or her to exercise the option of additional coverage
29 in favor of such children as he or she is legally responsible to
30 support.

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

43 Whenever in any proceeding in the chancery court concerning
44 the custody of a child a party alleges that the child whose
45 custody is at issue has been the victim of sexual or physical
46 abuse by the other party, the court may, on its own motion, grant
47 a continuance in the custody proceeding only until such allegation
48 has been investigated by the Department of Human Services. At the
49 time of ordering such continuance the court may direct the party,
50 and his attorney, making such allegation of child abuse to report
51 in writing and provide all evidence touching on the allegation of
52 abuse to the Department of Human Services. The Department of
53 Human Services shall investigate such allegation and take such

54 action as it deems appropriate and as provided in such cases under
55 the Youth Court Law (being Chapter 21 of Title 43, Mississippi
56 Code of 1972) or under the laws establishing family courts (being
57 Chapter 23 of Title 43, Mississippi Code of 1972).

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

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

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

- 79 (a) Attains the age of twenty-one (21) years, or
80 (b) Marries, or
81 (c) Discontinues full-time enrollment in school and

82 obtains full-time employment prior to attaining the age of
83 twenty-one (21) years, or

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

88 The custodial parent shall notify the noncustodial parent of
89 any intention to leave the state and establish residence in
90 another state at least thirty (30) days before leaving the state.
91 The court may waive this requirement if a compelling reason
92 exists for such waiver.

93 SECTION 2. Section 93-5-24, Mississippi Code of 1972, is
94 amended as follows:

95 93-5-24. (1) Custody may be awarded as follows according to
96 the best interests of the child:

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

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

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

103 (d) Physical and legal custody to either parent.

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

109 (i) The person in whose home the child has been

110 living in a wholesome and stable environment; or

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

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

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

121 (3) In other cases, joint custody may be awarded, in the
122 discretion of the court, upon application of one (1) or both
123 parents.

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

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

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

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

137 (d) For the purposes of this section, "legal custody"

138 means the decision-making rights, the responsibilities and the
139 authority relating to the health, education and welfare of a
140 child.

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

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

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

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

164 (8) The custodial parent shall notify the noncustodial
165 parent of any intention to leave the state and establish residence

166 in another state at least thirty (30) days before leaving the
167 state. The court may waive this requirement if a compelling
168 reason exists for such waiver.

169 SECTION 3. Section 93-11-65, Mississippi Code of 1972, is
170 amended as follows:

171 93-11-65. (1) (a) In addition to the right to proceed
172 under Section 93-5-23, Mississippi Code of 1972, and in addition
173 to the remedy of habeas corpus in proper cases, and other existing
174 remedies, the chancery court of the proper county shall have
175 jurisdiction to entertain suits for the custody, care, support and
176 maintenance of minor children and to hear and determine all such
177 matters, and shall, if need be, require bond, sureties or other
178 guarantee to secure any order for periodic payments for the
179 maintenance or support of a child. In the event a legally
180 responsible parent has health insurance available to him or her
181 through an employer or organization that may extend benefits to
182 the dependents of such parent, any order of support issued against
183 such parent may require him or her to exercise the option of
184 additional coverage in favor of such children as he or she is
185 legally responsible to support. Proceedings may be brought by or
186 against a resident or nonresident of the State of Mississippi,
187 whether or not having the actual custody of minor children, for
188 the purpose of judicially determining the legal custody of a
189 child. All actions herein authorized may be brought in the county
190 where the child is actually residing, or in the county of the
191 residence of the party who has actual custody, or of the residence
192 of the defendant. Process shall be had upon the parties as
193 provided by law for process in person or by publication, if they

194 be nonresidents of the state or residents of another jurisdiction
195 or are not found therein after diligent search and inquiry or are
196 unknown after diligent search and inquiry; provided that the court
197 or chancellor in vacation may fix a date in termtime or in
198 vacation to which process may be returnable and shall have power
199 to proceed in termtime or vacation. Provided, however, that if
200 the court shall find that both parties are fit and proper persons
201 to have custody of the children, and that either party is able to
202 adequately provide for the care and maintenance of the children,
203 and that it would be to the best interest and welfare of the
204 children, then any such child who shall have reached his twelfth
205 birthday shall have the privilege of choosing the parent with whom
206 he shall live.

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

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

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

221 (2) Provided further, that where the proof shows that both

222 parents have separate incomes or estates, the court may require
223 that each parent contribute to the support and maintenance of the
224 children in proportion to the relative financial ability of each.

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

237 (4) When a charge of abuse or neglect of a child first
238 arises in the course of a custody or maintenance action pending in
239 the chancery court pursuant to this section, the chancery court
240 may proceed with the investigation, hearing and determination of
241 such abuse or neglect charge as a part of its hearing and
242 determination of the custody or maintenance issue as between the
243 parents, as provided in Section 43-21-151, notwithstanding the
244 other provisions of the Youth Court Law. The proceedings in
245 chancery court on the abuse or neglect charge shall be
246 confidential in the same manner as provided in youth court
247 proceedings, and the chancery court shall appoint a guardian ad
248 litem in such cases, as provided under Section 43-21-121 for youth
249 court proceedings, who shall be an attorney. Unless the chancery

250 court's jurisdiction has been terminated, all disposition orders
251 in such cases for placement with the Department of Human Services
252 shall be reviewed by the court or designated authority at least
253 annually to determine if continued placement with the department
254 is in the best interest of the child or the public.

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

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

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

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

278 when the child:

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

280 (b) Marries, or

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

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

288 (9) The custodial parent shall notify the noncustodial
289 parent of any intention to leave the state and establish residence
290 in another state at least thirty (30) days before leaving the
291 state. The court may waive this requirement if a compelling
292 reason exists for such waiver.

293 SECTION 4. This act shall take effect and be in force from
294 and after July 1, 2000.