

By: Peranich

To: Judiciary A

HOUSE BILL NO. 1236

1 AN ACT TO AMEND SECTIONS 93-5-23, 93-11-65, 93-16-1 AND
2 93-16-3, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT ORDERS
3 REGARDING THE VISITATION RIGHTS OF GRANDPARENTS MAY BE MADE WHEN
4 ORDERS OF CUSTODY OF CHILDREN ARE MADE; AND FOR RELATED 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. The court may also make all orders regarding the
17 visitation rights of the grandparents of the children of the
18 marriage. Orders touching on the custody of the children of the
19 marriage may be made in accordance with the provisions of Section
20 93-5-24. The court may afterwards, on petition, change the
21 decree, and make from time to time such new decrees as the case
22 may require. However, where proof shows that both parents have
23 separate incomes or estates, the court may require that each
24 parent contribute to the support and maintenance of the children
25 of the marriage in proportion to the relative financial ability of
26 each. In the event a legally responsible parent has health
27 insurance available to him or her through an employer or

28 organization that may extend benefits to the dependents of such
29 parent, any order of support issued against such parent may
30 require him or her to exercise the option of additional coverage
31 in favor of such children as he or she is legally responsible to
32 support.

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

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

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

65 responding to such allegation.

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

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

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

82 (b) Marries, or

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

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

90 SECTION 2. Section 93-11-65, Mississippi Code of 1972, is
91 amended as follows:

92 93-11-65. (1) (a) In addition to the right to proceed
93 under Section 93-5-23, Mississippi Code of 1972, and in addition
94 to the remedy of habeas corpus in proper cases, and other existing
95 remedies, the chancery court of the proper county shall have
96 jurisdiction to entertain suits for the custody, care, support and
97 maintenance of minor children and to hear and determine all such

98 matters, and shall, if need be, require bond, sureties or other
99 guarantee to secure any order for periodic payments for the
100 maintenance or support of a child. The chancery court may also
101 make orders regarding the visitation rights of the grand parents
102 of the children of a marriage. In the event a legally responsible
103 parent has health insurance available to him or her through an
104 employer or organization that may extend benefits to the
105 dependents of such parent, any order of support issued against
106 such parent may require him or her to exercise the option of
107 additional coverage in favor of such children as he or she is
108 legally responsible to support. Proceedings may be brought by or
109 against a resident or nonresident of the State of Mississippi,
110 whether or not having the actual custody of minor children, for
111 the purpose of judicially determining the legal custody of a
112 child. All actions herein authorized may be brought in the county
113 where the child is actually residing, or in the county of the
114 residence of the party who has actual custody, or of the residence
115 of the defendant. Process shall be had upon the parties as
116 provided by law for process in person or by publication, if they
117 be nonresidents of the state or residents of another jurisdiction
118 or are not found therein after diligent search and inquiry or are
119 unknown after diligent search and inquiry; provided that the court
120 or chancellor in vacation may fix a date in termtime or in
121 vacation to which process may be returnable and shall have power
122 to proceed in termtime or vacation. Provided, however, that if
123 the court shall find that both parties are fit and proper persons
124 to have custody of the children, and that either party is able to
125 adequately provide for the care and maintenance of the children,
126 and that it would be to the best interest and welfare of the
127 children, then any such child who shall have reached his twelfth
128 birthday shall have the privilege of choosing the parent with whom
129 he shall live.

130 (b) An order of child support shall specify the sum to

131 be paid weekly or otherwise. In addition to providing for support
132 and education, the order shall also provide for the support of the
133 child prior to the making of the order for child support, and such
134 other expenses as the court may deem proper.

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

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

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

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

160 (4) When a charge of abuse or neglect of a child first
161 arises in the course of a custody or maintenance action pending in
162 the chancery court pursuant to this section, the chancery court
163 may proceed with the investigation, hearing and determination of

164 such abuse or neglect charge as a part of its hearing and
165 determination of the custody or maintenance issue as between the
166 parents, as provided in Section 43-21-151, notwithstanding the
167 other provisions of the Youth Court Law. The proceedings in
168 chancery court on the abuse or neglect charge shall be
169 confidential in the same manner as provided in youth court
170 proceedings, and the chancery court shall appoint a guardian ad
171 litem in such cases, as provided under Section 43-21-121 for youth
172 court proceedings, who shall be an attorney. Unless the chancery
173 court's jurisdiction has been terminated, all disposition orders
174 in such cases for placement with the Department of Human Services
175 shall be reviewed by the court or designated authority at least
176 annually to determine if continued placement with the department
177 is in the best interest of the child or the public.

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

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

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

197 state case registry.

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

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

203 (b) Marries, or

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

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

211 SECTION 3. Section 93-16-1, Mississippi Code of 1972, is
212 amended as follows:

213 93-16-1. Any court of this state which is competent to
214 decide child custody matters shall have jurisdiction to grant
215 visitation rights with a minor child or children to the
216 grandparents of such minor child or children as provided in this
217 chapter, Section 93-5-23 and Section 93-11-65.

218 SECTION 4. Section 93-16-3, Mississippi Code of 1972, is
219 amended as follows:

220 93-16-3. (1) Whenever a court of this state enters a decree
221 or order awarding custody of a minor child to one (1) of the
222 parents of the child or terminating the parental rights of one (1)
223 of the parents of a minor child, or whenever one (1) of the
224 parents of a minor child dies, and such order does not address
225 visitation rights of the grandparents, either parent of the
226 child's parents who was not awarded custody or whose parental
227 rights have been terminated or who has died may petition the court
228 in which the decree or order was rendered or, in the case of the
229 death of a parent, petition the chancery court in the county in

230 which the child resides, and seek visitation rights with such
231 child.

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

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

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

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

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

263 SECTION 5. This act shall take effect and be in force from
264 and after its passage.