

By: Representative Peranich

To: Judiciary A

HOUSE BILL NO. 883

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 shall be made in accordance with the provisions of  
20 Section 93-5-24. The court may afterwards, on petition, change  
21 the decree, and make from time to time such new decrees as the  
22 case may require. However, where proof shows that both parents  
23 have 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 grandparents of  
102 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 (9) Upon motion of a party requesting temporary child  
212 support pending a determination of parentage, temporary support  
213 shall be ordered if there is clear and convincing evidence of  
214 paternity on the basis of genetic tests or other evidence, unless  
215 the court makes written findings of fact on the record that the  
216 award of temporary support would be unjust or inappropriate in a  
217 particular case.

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

220 93-16-1. Any court of this state which is competent to  
221 decide child custody matters shall have jurisdiction to grant  
222 visitation rights with a minor child or children to the  
223 grandparents of such minor child or children as provided in this  
224 chapter, Section 93-5-23 and Section 93-11-65.



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

227 93-16-3. (1) Whenever a court of this state enters a decree  
228 or order awarding custody of a minor child to one (1) of the  
229 parents of the child or terminating the parental rights of one (1)  
230 of the parents of a minor child, or whenever one (1) of the  
231 parents of a minor child dies, and such order does not address  
232 visitation rights of the grandparents, either parent of the  
233 child's parents who was not awarded custody or whose parental  
234 rights have been terminated or who has died may petition the court  
235 in which the decree or order was rendered or, in the case of the  
236 death of a parent, petition the chancery court in the county in  
237 which the child resides, and seek visitation rights with such  
238 child.

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

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

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

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





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

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

