

By: Representative Bailey

To: Judiciary A

HOUSE BILL NO. 1112

1 AN ACT TO AMEND SECTIONS 93-5-23 AND 93-11-65, MISSISSIPPI  
2 CODE OF 1972, TO REVISE EMANCIPATION OF A CHILD FOR CHILD SUPPORT  
3 TERMINATION PURPOSES; AND FOR RELATED PURPOSES.

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

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

7 93-5-23. When a divorce shall be decreed from the bonds of  
8 matrimony, the court may, in its discretion, having regard to the  
9 circumstances of the parties and the nature of the case, as may  
10 seem equitable and just, make all orders touching the care,  
11 custody and maintenance of the children of the marriage, and also  
12 touching the maintenance and alimony of the wife or the husband,  
13 or any allowance to be made to her or him, and shall, if need be,  
14 require bond, sureties or other guarantee for the payment of the  
15 sum so allowed. Orders touching on the custody of the children of  
16 the marriage shall be made in accordance with the provisions of  
17 Section 93-5-24. The court may afterwards, on petition, change  
18 the decree, and make from time to time such new decrees as the  
19 case may require. However, where proof shows that both parents  
20 have separate incomes or estates, the court may require that each  
21 parent contribute to the support and maintenance of the children  
22 of the marriage in proportion to the relative financial ability of  
23 each. In the event a legally responsible parent has health  
24 insurance available to him or her through an employer or  
25 organization that may extend benefits to the dependents of such  
26 parent, any order of support issued against such parent may  
27 require him or her to exercise the option of additional coverage

28 in favor of such children as he or she is legally responsible to  
29 support.

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

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

57 If after investigation by the Department of Human Services or  
58 final disposition by the youth court or family court allegations  
59 of child abuse are found to be without foundation, the chancery  
60 court shall order the alleging party to pay all court costs and

61 reasonable attorney's fees incurred by the defending party in  
62 responding to such allegation.

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

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

78 (a) Attains the age of eighteen (18) years and  
79 discontinues full-time enrollment in school, or

80 (b) Marries, or

81 (c) \* \* \* Obtains full-time employment after attaining  
82 the age of eighteen (18) years, or

83 (d) Voluntarily moves from the home of the custodial  
84 parent or guardian and establishes independent living  
85 arrangements \* \* \*.

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

88 93-11-65. (1) (a) In addition to the right to proceed  
89 under Section 93-5-23, Mississippi Code of 1972, and in addition  
90 to the remedy of habeas corpus in proper cases, and other existing  
91 remedies, the chancery court of the proper county shall have  
92 jurisdiction to entertain suits for the custody, care, support and  
93 maintenance of minor children and to hear and determine all such

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

124 (b) An order of child support shall specify the sum to  
125 be paid weekly or otherwise. In addition to providing for support  
126 and education, the order shall also provide for the support of the

127 child prior to the making of the order for child support, and such  
128 other expenses as the court may deem proper.

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

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

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

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

154 (4) When a charge of abuse or neglect of a child first  
155 arises in the course of a custody or maintenance action pending in  
156 the chancery court pursuant to this section, the chancery court  
157 may proceed with the investigation, hearing and determination of  
158 such abuse or neglect charge as a part of its hearing and  
159 determination of the custody or maintenance issue as between the

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

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

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

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

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

196           (a) Attains the age of eighteen (18) years and  
197 discontinues full-time enrollment in school, or

198           (b) Marries, or

199           (c) \* \* \* Obtains full-time employment after attaining  
200 the age of eighteen (18) years, or

201           (d) Voluntarily moves from the home of the custodial  
202 parent or guardian and establishes independent living  
203 arrangements \* \* \*.

204           (9) Upon motion of a party requesting temporary child  
205 support pending a determination of parentage, temporary support  
206 shall be ordered if there is clear and convincing evidence of  
207 paternity on the basis of genetic tests or other evidence, unless  
208 the court makes written findings of fact on the record that the  
209 award of temporary support would be unjust or inappropriate in a  
210 particular case.

211           SECTION 3. This act shall take effect and be in force from  
212 and after July 1, 2001.