

By: Senator(s) Huggins

To: Public Health and
Welfare; Judiciary

SENATE BILL NO. 2493

1 AN ACT TO AMEND SECTIONS 93-5-23 AND 93-11-65, MISSISSIPPI
2 CODE OF 1972, TO PROVIDE FOR THE AUTOMATIC EMANCIPATION OF A MINOR
3 AND THE RECOVERY OF ARREARS BEYOND THE AGE OF EMANCIPATION IN
4 CHILD SUPPORT ENFORCEMENT CASES; 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. (1) When a divorce shall be decreed from the bonds
9 of matrimony, the court may, in its discretion, having regard to
10 the circumstances of the parties and the nature of the case, as
11 may 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 shall 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 (2) 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 (3) Whenever in any proceeding in the chancery court
44 concerning the custody of a child a party alleges that the child
45 whose custody is at issue has been the victim of sexual or
46 physical abuse by the other party, the court may, on its own
47 motion, grant a continuance in the custody proceeding only until
48 such allegation has been investigated by the Department of Human
49 Services. At the time of ordering such continuance the court may
50 direct the party, and his attorney, making such allegation of
51 child abuse to report in writing and provide all evidence touching
52 on the allegation of abuse to the Department of Human Services.
53 The Department of Human Services shall investigate such allegation
54 and take such action as it deems appropriate and as provided in
55 such cases under the Youth Court Law (being Chapter 21 of Title
56 43, Mississippi Code of 1972) or under the laws establishing
57 family courts (being Chapter 23 of Title 43, Mississippi Code of
58 1972).

59 (4) If after investigation by the Department of Human
60 Services or final disposition by the youth court or family court
61 allegations of child abuse are found to be without foundation, the



62 chancery court shall order the alleging party to pay all court
63 costs and reasonable attorney's fees incurred by the defending
64 party in responding to such allegation.

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

76 (6) (a) The duty of support of a child terminates upon the
77 emancipation of the child. Emancipation shall be automatic when
78 the child attains the age of twenty-one (21) years unless there is
79 an order of the court to the contrary.

80 (b) Emancipation shall be effective upon proof of one
81 (1) of the following occurrences being filed with the clerk of the
82 court and a copy given to all interested parties:

83 (i) Marries (as evidenced by a marriage
84 certificate); or

85 (ii) Enlists in the military and enters active
86 duty with the U.S. Armed Forces or full-time employment with the
87 National Guard or Reserve (as evidenced by any official government
88 document); or

89 (iii) Is convicted as an adult of a felony and
90 sentenced to an adult correctional facility (as evidenced by a
91 sentencing order).

92 Such emancipation shall not be considered retroactive absent
93 a court order.



94 (c) However, the court may determine that emancipation
95 has occurred and no prospective support obligation exists when the
96 child:

97 (i) Discontinues full-time enrollment in school
98 and obtains full-time employment prior to attaining the age of
99 twenty-one (21) years; or

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

104 Such a determination shall not be made retroactive prior to
105 the date of the filing.

106 (d) In child support orders where the current child
107 support obligation has terminated and there exists an arrearage
108 for unpaid child support, then the amount that is currently
109 ordered to be paid (current and arrearage obligation) shall
110 continue, until further order of the court, to be paid by the
111 obligor or withheld by the obligor's employer. Said payments
112 shall be applied to the child support arrearage until paid in full
113 without further order of the court.

114 **SECTION 2.** Section 93-11-65, Mississippi Code of 1972, is
115 amended as follows:

116 93-11-65. (1) (a) In addition to the right to proceed
117 under Section 93-5-23, Mississippi Code of 1972, and in addition
118 to the remedy of habeas corpus in proper cases, and other existing
119 remedies, the chancery court of the proper county shall have
120 jurisdiction to entertain suits for the custody, care, support and
121 maintenance of minor children and to hear and determine all such
122 matters, and shall, if need be, require bond, sureties or other
123 guarantee to secure any order for periodic payments for the
124 maintenance or support of a child. In the event a legally
125 responsible parent has health insurance available to him or her
126 through an employer or organization that may extend benefits to



127 the dependents of such parent, any order of support issued against
128 such parent may require him or her to exercise the option of
129 additional coverage in favor of such children as he or she is
130 legally responsible to support. Proceedings may be brought by or
131 against a resident or nonresident of the State of Mississippi,
132 whether or not having the actual custody of minor children, for
133 the purpose of judicially determining the legal custody of a
134 child. All actions herein authorized may be brought in the county
135 where the child is actually residing, or in the county of the
136 residence of the party who has actual custody, or of the residence
137 of the defendant. Process shall be had upon the parties as
138 provided by law for process in person or by publication, if they
139 be nonresidents of the state or residents of another jurisdiction
140 or are not found therein after diligent search and inquiry or are
141 unknown after diligent search and inquiry; provided that the court
142 or chancellor in vacation may fix a date in termtime or in
143 vacation to which process may be returnable and shall have power
144 to proceed in termtime or vacation. Provided, however, that if
145 the court shall find that both parties are fit and proper persons
146 to have custody of the children, and that either party is able to
147 adequately provide for the care and maintenance of the children,
148 and that it would be to the best interest and welfare of the
149 children, then any such child who shall have reached his twelfth
150 birthday shall have the privilege of choosing the parent with whom
151 he shall live.

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

157 (c) The court may require the payment to be made to the
158 custodial parent, or to some person or corporation to be
159 designated by the court as trustee, but if the child or custodial



160 parent is receiving public assistance, the Department of Human
161 Services shall be made the trustee.

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

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

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

182 (4) When a charge of abuse or neglect of a child first
183 arises in the course of a custody or maintenance action pending in
184 the chancery court pursuant to this section, the chancery court
185 may proceed with the investigation, hearing and determination of
186 such abuse or neglect charge as a part of its hearing and
187 determination of the custody or maintenance issue as between the
188 parents, as provided in Section 43-21-151, notwithstanding the
189 other provisions of the Youth Court Law. The proceedings in
190 chancery court on the abuse or neglect charge shall be
191 confidential in the same manner as provided in youth court
192 proceedings, and the chancery court shall appoint a guardian ad



193 litem in such cases, as provided under Section 43-21-121 for youth
194 court proceedings, who shall be an attorney. Unless the chancery
195 court's jurisdiction has been terminated, all disposition orders
196 in such cases for placement with the Department of Human Services
197 shall be reviewed by the court or designated authority at least
198 annually to determine if continued placement with the department
199 is in the best interest of the child or the public.

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

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

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

220 (8) (a) The duty of support of a child terminates upon the
221 emancipation of the child. Emancipation shall be automatic when
222 the child attains the age of twenty-one (21) years unless there is
223 an order of the court to the contrary.



224 (b) Emancipation shall be effective upon proof of one
225 (1) of the following occurrences being filed with the clerk of the
226 court and a copy given to all interested parties:

227 (i) Marries (as evidenced by a marriage
228 certificate); or

229 (ii) Enlists in the military and enters active
230 duty with the U.S. Armed Forces or full-time employment with the
231 National Guard or Reserve (as evidenced by any official government
232 document); or

233 (iii) Is convicted as an adult of a felony and
234 sentenced to an adult correctional facility (as evidenced by a
235 sentencing order).

236 Such emancipation shall not be considered retroactive absent
237 a court order.

238 (c) However, the court may determine that emancipation
239 has occurred and no prospective support obligation exists when the
240 child:

241 (i) Discontinues full-time enrollment in school
242 and obtains full-time employment prior to attaining the age of
243 twenty-one (21) years; or

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

248 Such a determination shall not be made retroactive prior to
249 the date of the filing.

250 (d) In child support orders where the current child
251 support obligation has terminated and there exists an arrearage
252 for unpaid child support, then the amount that is currently
253 ordered to be paid (current and arrearage obligation) shall
254 continue, until further order of the court, to be paid by the
255 obligor or withheld by the obligor's employer. Said payments



256 shall be applied to the child support arrearage until paid in full
257 without further order of the court.

258 (9) Upon motion of a party requesting temporary child
259 support pending a determination of parentage, temporary support
260 shall be ordered if there is clear and convincing evidence of
261 paternity on the basis of genetic tests or other evidence, unless
262 the court makes written findings of fact on the record that the
263 award of temporary support would be unjust or inappropriate in a
264 particular case.

265 **SECTION 3.** This act shall take effect and be in force from
266 and after July 1, 2002.

