

By: Representative Reeves

To: Judiciary A

## HOUSE BILL NO. 570

1 AN ACT TO AMEND SECTION 93-11-65, MISSISSIPPI CODE OF 1972,  
2 TO REVISE THE RIGHT OF A TWELVE-YEAR-OLD CHILD TO SELECT THE  
3 CUSTODIAL PARENT; AND FOR RELATED PURPOSES.

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

5 **SECTION 1.** Section 93-11-65, Mississippi Code of 1972, is  
6 amended as follows:

7 93-11-65. (1) (a) In addition to the right to proceed  
8 under Section 93-5-23, Mississippi Code of 1972, and in addition  
9 to the remedy of habeas corpus in proper cases, and other existing  
10 remedies, the chancery court of the proper county shall have  
11 jurisdiction to entertain suits for the custody, care, support and  
12 maintenance of minor children and to hear and determine all such  
13 matters, and shall, if need be, require bond, sureties or other  
14 guarantee to secure any order for periodic payments for the  
15 maintenance or support of a child. In the event a legally  
16 responsible parent has health insurance available to him or her  
17 through an employer or organization that may extend benefits to  
18 the dependents of such parent, any order of support issued against  
19 such parent may require him or her to exercise the option of  
20 additional coverage in favor of such children as he or she is  
21 legally responsible to support. Proceedings may be brought by or  
22 against a resident or nonresident of the State of Mississippi,  
23 whether or not having the actual custody of minor children, for  
24 the purpose of judicially determining the legal custody of a  
25 child. All actions herein authorized may be brought in the county  
26 where the child is actually residing, or in the county of the  
27 residence of the party who has actual custody, or of the residence

28 of the defendant. Process shall be had upon the parties as  
29 provided by law for process in person or by publication, if they  
30 be nonresidents of the state or residents of another jurisdiction  
31 or are not found therein after diligent search and inquiry or are  
32 unknown after diligent search and inquiry; provided that the court  
33 or chancellor in vacation may fix a date in termtime or in  
34 vacation to which process may be returnable and shall have power  
35 to proceed in termtime or vacation. Provided, however, that if  
36 the court shall find that both parties are fit and proper persons  
37 to have custody of the children, and that either party is able to  
38 adequately provide for the care and maintenance of the children,  
39 and that it would be to the best interest and welfare of the  
40 children, then any such child who shall have reached his twelfth  
41 birthday may have the privilege of choosing the parent with whom  
42 he shall live.

43 (b) An order of child support shall specify the sum to  
44 be paid weekly or otherwise. In addition to providing for support  
45 and education, the order shall also provide for the support of the  
46 child prior to the making of the order for child support, and such  
47 other expenses as the court may deem proper.

48 (c) The court may require the payment to be made to the  
49 custodial parent, or to some person or corporation to be  
50 designated by the court as trustee, but if the child or custodial  
51 parent is receiving public assistance, the Department of Human  
52 Services shall be made the trustee.

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

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

61 (3) Whenever the court has ordered a party to make periodic  
62 payments for the maintenance or support of a child, but no bond,  
63 sureties or other guarantee has been required to secure such  
64 payments, and whenever such payments as have become due remain  
65 unpaid for a period of at least thirty (30) days, the court may,  
66 upon petition of the person to whom such payments are owing, or  
67 such person's legal representative, enter an order requiring that  
68 bond, sureties or other security be given by the person obligated  
69 to make such payments, the amount and sufficiency of which shall  
70 be approved by the court. The obligor shall, as in other civil  
71 actions, be served with process and shall be entitled to a hearing  
72 in such case.

73 (4) When a charge of abuse or neglect of a child first  
74 arises in the course of a custody or maintenance action pending in  
75 the chancery court pursuant to this section, the chancery court  
76 may proceed with the investigation, hearing and determination of  
77 such abuse or neglect charge as a part of its hearing and  
78 determination of the custody or maintenance issue as between the  
79 parents, as provided in Section 43-21-151, notwithstanding the  
80 other provisions of the Youth Court Law. The proceedings in  
81 chancery court on the abuse or neglect charge shall be  
82 confidential in the same manner as provided in youth court  
83 proceedings, and the chancery court shall appoint a guardian ad  
84 litem in such cases, as provided under Section 43-21-121 for youth  
85 court proceedings, who shall be an attorney. Unless the chancery  
86 court's jurisdiction has been terminated, all disposition orders  
87 in such cases for placement with the Department of Human Services  
88 shall be reviewed by the court or designated authority at least  
89 annually to determine if continued placement with the department  
90 is in the best interest of the child or the public.

91 (5) Each party to a paternity or child support proceeding  
92 shall notify the other within five (5) days after any change of  
93 address. In addition, the noncustodial and custodial parent shall

94 file and update, with the court and with the state case registry,  
95 information on that party's location and identity, including  
96 social security number, residential and mailing addresses,  
97 telephone numbers, photograph, driver's license number, and name,  
98 address and telephone number of the party's employer. This  
99 information shall be required upon entry of an order or within  
100 five (5) days of a change of address.

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

104 (7) In any subsequent child support enforcement action  
105 between the parties, upon sufficient showing that diligent effort  
106 has been made to ascertain the location of a party, due process  
107 requirements for notice and service of process shall be deemed to  
108 be met with respect to the party upon delivery of written notice  
109 to the most recent residential or employer address filed with the  
110 state case registry.

111 (8) The duty of support of a child terminates upon the  
112 emancipation of the child. The court may determine that  
113 emancipation has occurred and no other support obligation exists  
114 when the child:

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

116 (b) Marries, or

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

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

124 (9) Upon motion of a party requesting temporary child  
125 support pending a determination of parentage, temporary support  
126 shall be ordered if there is clear and convincing evidence of

127 paternity on the basis of genetic tests or other evidence, unless  
128 the court makes written findings of fact on the record that the  
129 award of temporary support would be unjust or inappropriate in a  
130 particular case.

131       **SECTION 2.** This act shall take effect and be in force from  
132 and after July 1, 2004.