

By: Representative Jennings

To: Judiciary A

HOUSE BILL NO. 1101

1 AN ACT TO AMEND SECTION 93-9-9, MISSISSIPPI CODE OF 1972, TO
2 PROVIDE THAT A HUSBAND OF A CHILD BORN DURING A MARRIAGE MAY BE
3 DETERMINED TO BE THE FATHER IF SUCH DETERMINATION IS IN THE BEST
4 INTEREST OF THE CHILD; TO AMEND SECTION 93-5-23 AND 93-11-65,
5 MISSISSIPPI CODE OF 1972, TO ALLOW CHILD CUSTODY TO SUCH FATHER;
6 AND FOR RELATED PURPOSES.

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

8 **SECTION 1.** Section 93-9-9, Mississippi Code of 1972, is
9 amended as follows:

10 93-9-9. (1) Paternity may be determined upon the petition
11 of the mother, or father, the child or any public authority
12 chargeable by law with the support of the child; provided that
13 such an adjudication after the death of the defendant must be made
14 only upon clear and convincing evidence. If paternity has been
15 lawfully determined, or has been acknowledged in writing according
16 to the laws of this state, the liabilities of the noncustodial
17 parent may be enforced in the same or other proceedings by the
18 custodial parent, the child, or any public authority which has
19 furnished or may furnish the reasonable expenses of pregnancy,
20 confinement, education, necessary support and maintenance, and
21 medical or funeral expenses for the custodial parent or the child.
22 The trier of fact shall receive without the need for third-party
23 foundation testimony certified, attested or sworn documentation as
24 evidence of (a) childbirth records; (b) cost of filing fees; (c)
25 court costs; (d) services of process fees; (e) mailing cost; (f)
26 genetic tests and testing fees; (g) the department's attorney's
27 fees; (h) in cases where the state or any of its entities or
28 divisions have provided medical services to the child or the
29 child's mother, all costs of prenatal care, birthing, postnatal

30 care and any other medical expenses incurred by the child or by
31 the mother as a consequence of the mother's pregnancy or delivery;
32 and (i) funeral expenses. All costs and fees shall be ordered
33 paid to the Department of Human Services in all cases successfully
34 prosecuted with a minimum of Two Hundred Fifty Dollars (\$250.00)
35 in attorney's fees or an amount determined by the court without
36 submitting an affidavit. However, proceedings hereunder shall not
37 be instituted by the Department of Human Services after the child
38 has reached the age of eighteen (18) years but proceedings may be
39 instituted by a private attorney at any time until such child
40 attains the age of twenty-one (21) years unless the child has been
41 emancipated as provided in Section 93-5-23 and Section 93-11-65.
42 In the event of court-determined paternity, the surname of the
43 child shall be that of the father, unless the judgment specifies
44 otherwise.

45 (2) If the alleged father in an action to determine
46 paternity to which the Department of Human Services is a party
47 fails to appear for a scheduled hearing after having been served
48 with process or subsequent notice consistent with the Rules of
49 Civil Procedure, his paternity of the child(ren) shall be
50 established by the court if an affidavit sworn to by the mother
51 averring the alleged father's paternity of the child has
52 accompanied the complaint to determine paternity. Said affidavit
53 shall constitute sufficient grounds for the court's finding of the
54 alleged father's paternity without the necessity of the presence
55 or testimony of the mother at the said hearing. The court shall,
56 upon motion by the Department of Human Services, enter a judgment
57 of paternity. Any person who shall willfully and knowingly file a
58 false affidavit shall be subject to a fine of not more than One
59 Thousand Dollars (\$1,000.00).

60 (3) Upon application of both parents to the State Board of
61 Health and receipt by the State Board of Health of a sworn
62 acknowledgement of paternity executed by both parents subsequent

63 to the birth of a child born out of wedlock, the birth certificate
64 of the child shall be amended to show such paternity if paternity
65 is not shown on the birth certificate. Upon request of the
66 parents for the legitimization of a child under this section, the
67 surname of the child shall be changed on the certificate to that
68 of the father.

69 (4) (a) A signed voluntary acknowledgment of paternity is
70 subject to the right of any signatory to rescind the
71 acknowledgment within the earlier of:

72 (i) Sixty (60) days; or

73 (ii) The date of a judicial proceeding relating to
74 the child, including a proceeding to establish a support order, in
75 which the signatory is a party.

76 (b) After the expiration of the sixty-day period
77 specified in subsection (4)(a)(i) of this section, a signed
78 voluntary acknowledgment of paternity may be challenged in court
79 only on the basis of fraud, duress or material mistake of fact,
80 with the burden of proof upon the challenger; the legal
81 responsibilities, including child support obligations, of any
82 signatory arising from the acknowledgment may not be suspended
83 during the pendency of the challenge, except for good cause shown.

84 (5) The presumption that the husband of a child's mother is
85 the child's father shall be grounds for the court to declare such
86 husband as the legal father if such finding is in the best
87 interest of the child, notwithstanding the fact that blood or
88 genetic testing determines that he is not the biological father.

89 **SECTION 2.** Section 93-5-23, Mississippi Code of 1972, is
90 amended as follows:

91 93-5-23. When a divorce shall be decreed from the bonds of
92 matrimony, the court may, in its discretion, having regard to the
93 circumstances of the parties and the nature of the case, as may
94 seem equitable and just, make all orders touching the care,
95 custody and maintenance of the children of the marriage, and also

96 touching the maintenance and alimony of the wife or the husband,
97 or any allowance to be made to her or him, and shall, if need be,
98 require bond, sureties or other guarantee for the payment of the
99 sum so allowed. Orders touching on the custody of the children of
100 the marriage shall be made in accordance with the provisions of
101 Section 93-5-24. An order of custody may be made in accordance
102 with Section 93-9-9(5). The court may afterwards, on petition,
103 change the decree, and make from time to time such new decrees as
104 the case may require. However, where proof shows that both
105 parents have separate incomes or estates, the court may require
106 that each parent contribute to the support and maintenance of the
107 children of the marriage in proportion to the relative financial
108 ability of each. In the event a legally responsible parent has
109 health insurance available to him or her through an employer or
110 organization that may extend benefits to the dependents of such
111 parent, any order of support issued against such parent may
112 require him or her to exercise the option of additional coverage
113 in favor of such children as he or she is legally responsible to
114 support.

115 Whenever the court has ordered a party to make periodic
116 payments for the maintenance or support of a child, but no bond,
117 sureties or other guarantee has been required to secure such
118 payments, and whenever such payments as have become due remain
119 unpaid for a period of at least thirty (30) days, the court may,
120 upon petition of the person to whom such payments are owing, or
121 such person's legal representative, enter an order requiring that
122 bond, sureties or other security be given by the person obligated
123 to make such payments, the amount and sufficiency of which shall
124 be approved by the court. The obligor shall, as in other civil
125 actions, be served with process and shall be entitled to a hearing
126 in such case.

127 Whenever in any proceeding in the chancery court concerning
128 the custody of a child a party alleges that the child whose

129 custody is at issue has been the victim of sexual or physical
130 abuse by the other party, the court may, on its own motion, grant
131 a continuance in the custody proceeding only until such allegation
132 has been investigated by the Department of Human Services. At the
133 time of ordering such continuance the court may direct the party,
134 and his attorney, making such allegation of child abuse to report
135 in writing and provide all evidence touching on the allegation of
136 abuse to the Department of Human Services. The Department of
137 Human Services shall investigate such allegation and take such
138 action as it deems appropriate and as provided in such cases under
139 the Youth Court Law (being Chapter 21 of Title 43, Mississippi
140 Code of 1972) or under the laws establishing family courts (being
141 Chapter 23 of Title 43, Mississippi Code of 1972).

142 If after investigation by the Department of Human Services or
143 final disposition by the youth court or family court allegations
144 of child abuse are found to be without foundation, the chancery
145 court shall order the alleging party to pay all court costs and
146 reasonable attorney's fees incurred by the defending party in
147 responding to such allegation.

148 The court may investigate, hear and make a determination in a
149 custody action when a charge of abuse and/or neglect arises in the
150 course of a custody action as provided in Section 43-21-151, and
151 in such cases the court shall appoint a guardian ad litem for the
152 child as provided under Section 43-21-121, who shall be an
153 attorney. Unless the chancery court's jurisdiction has been
154 terminated, all disposition orders in such cases for placement
155 with the Department of Human Services shall be reviewed by the
156 court or designated authority at least annually to determine if
157 continued placement with the department is in the best interest of
158 the child or public.

159 The duty of support of a child terminates upon the
160 emancipation of the child. The court may determine that

161 emancipation has occurred and no other support obligation exists
162 when the child:

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

164 (b) Marries, or

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

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

172 **SECTION 3.** Section 93-11-65, Mississippi Code of 1972, is
173 amended as follows:

174 93-11-65. (1) (a) In addition to the right to proceed
175 under Section 93-5-23, Mississippi Code of 1972, and in addition
176 to the remedy of habeas corpus in proper cases, and other existing
177 remedies, the chancery court of the proper county shall have
178 jurisdiction to entertain suits for the custody, care, support and
179 maintenance of minor children and to hear and determine all such
180 matters, and shall, if need be, require bond, sureties or other
181 guarantee to secure any order for periodic payments for the
182 maintenance or support of a child. The court may also entertain a
183 custody suit based on a finding under Section 93-9-9(5). In the
184 event a legally responsible parent has health insurance available
185 to him or her through an employer or organization that may extend
186 benefits to the dependents of such parent, any order of support
187 issued against such parent may require him or her to exercise the
188 option of additional coverage in favor of such children as he or
189 she is legally responsible to support. Proceedings may be brought
190 by or against a resident or nonresident of the State of
191 Mississippi, whether or not having the actual custody of minor
192 children, for the purpose of judicially determining the legal
193 custody of a child. All actions herein authorized may be brought

194 in the county where the child is actually residing, or in the
195 county of the residence of the party who has actual custody, or of
196 the residence of the defendant. Process shall be had upon the
197 parties as provided by law for process in person or by
198 publication, if they be nonresidents of the state or residents of
199 another jurisdiction or are not found therein after diligent
200 search and inquiry or are unknown after diligent search and
201 inquiry; provided that the court or chancellor in vacation may fix
202 a date in termtime or in vacation to which process may be
203 returnable and shall have power to proceed in termtime or
204 vacation. Provided, however, that if the court shall find that
205 both parties are fit and proper persons to have custody of the
206 children, and that either party is able to adequately provide for
207 the care and maintenance of the children, and that it would be to
208 the best interest and welfare of the children, then any such child
209 who shall have reached his twelfth birthday shall have the
210 privilege of choosing the parent with whom he shall live.

211 (b) An order of child support shall specify the sum to
212 be paid weekly or otherwise. In addition to providing for support
213 and education, the order shall also provide for the support of the
214 child prior to the making of the order for child support, and such
215 other expenses as the court may deem proper.

216 (c) The court may require the payment to be made to the
217 custodial parent, or to some person or corporation to be
218 designated by the court as trustee, but if the child or custodial
219 parent is receiving public assistance, the Department of Human
220 Services shall be made the trustee.

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

225 (2) Provided further, that where the proof shows that both
226 parents have separate incomes or estates, the court may require

227 that each parent contribute to the support and maintenance of the
228 children in proportion to the relative financial ability of each.

229 (3) Whenever the court has ordered a party to make periodic
230 payments for the maintenance or support of a child, but no bond,
231 sureties or other guarantee has been required to secure such
232 payments, and whenever such payments as have become due remain
233 unpaid for a period of at least thirty (30) days, the court may,
234 upon petition of the person to whom such payments are owing, or
235 such person's legal representative, enter an order requiring that
236 bond, sureties or other security be given by the person obligated
237 to make such payments, the amount and sufficiency of which shall
238 be approved by the court. The obligor shall, as in other civil
239 actions, be served with process and shall be entitled to a hearing
240 in such case.

241 (4) When a charge of abuse or neglect of a child first
242 arises in the course of a custody or maintenance action pending in
243 the chancery court pursuant to this section, the chancery court
244 may proceed with the investigation, hearing and determination of
245 such abuse or neglect charge as a part of its hearing and
246 determination of the custody or maintenance issue as between the
247 parents, as provided in Section 43-21-151, notwithstanding the
248 other provisions of the Youth Court Law. The proceedings in
249 chancery court on the abuse or neglect charge shall be
250 confidential in the same manner as provided in youth court
251 proceedings, and the chancery court shall appoint a guardian ad
252 litem in such cases, as provided under Section 43-21-121 for youth
253 court proceedings, who shall be an attorney. Unless the chancery
254 court's jurisdiction has been terminated, all disposition orders
255 in such cases for placement with the Department of Human Services
256 shall be reviewed by the court or designated authority at least
257 annually to determine if continued placement with the department
258 is in the best interest of the child or the public.

259 (5) Each party to a paternity or child support proceeding
260 shall notify the other within five (5) days after any change of
261 address. In addition, the noncustodial and custodial parent shall
262 file and update, with the court and with the state case registry,
263 information on that party's location and identity, including
264 social security number, residential and mailing addresses,
265 telephone numbers, photograph, driver's license number, and name,
266 address and telephone number of the party's employer. This
267 information shall be required upon entry of an order or within
268 five (5) days of a change of address.

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

272 (7) In any subsequent child support enforcement action
273 between the parties, upon sufficient showing that diligent effort
274 has been made to ascertain the location of a party, due process
275 requirements for notice and service of process shall be deemed to
276 be met with respect to the party upon delivery of written notice
277 to the most recent residential or employer address filed with the
278 state case registry.

279 (8) The duty of support of a child terminates upon the
280 emancipation of the child. The court may determine that
281 emancipation has occurred and no other support obligation exists
282 when the child:

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

284 (b) Marries, or

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

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

292 (9) Upon motion of a party requesting temporary child
293 support pending a determination of parentage, temporary support
294 shall be ordered if there is clear and convincing evidence of
295 paternity on the basis of genetic tests or other evidence, unless
296 the court makes written findings of fact on the record that the
297 award of temporary support would be unjust or inappropriate in a
298 particular case.

299 **SECTION 4.** This act shall take effect and be in force from
300 and after July 1, 2004.