

By: Representative Formby

To: Judiciary A

HOUSE BILL NO. 1235

1 AN ACT TO PROVIDE FOR THE RELOCATING OF A CHILD'S RESIDENCE
2 WHEN SUCH CHILD IS THE SUBJECT OF A CUSTODY ORDER; TO DEFINE
3 CERTAIN TERMS; TO PROVIDE FOR THE APPLICABILITY OF THIS ACT; TO
4 PROVIDE NOTICE REQUIREMENTS FOR RELOCATION; TO PROVIDE THAT
5 FAILURE TO GIVE NOTICE OF RELOCATION OR RELOCATION WITHOUT COURT
6 AUTHORIZATION MAY RESULT IN CERTAIN OTHER LEGAL RAMIFICATIONS; TO
7 AUTHORIZE RELOCATION UNLESS OBJECTION HAS OCCURRED; TO PROVIDE
8 OBJECTION PROCEDURES; TO PROVIDE FOR HEARING PRIORITY; TO PROVIDE
9 FOR TEMPORARY ORDERS; TO PROVIDE THAT PROPOSED RELOCATION IS NOT A
10 BASIS FOR MODIFICATION; TO PROVIDE FACTORS TO DETERMINE CONTESTED
11 RELOCATION; TO PROVIDE A BURDEN OF PROOF; TO AUTHORIZE THE COURT
12 TO REQUIRE SECURITY; TO REQUIRE THE APPLICATION OF FACTORS AT THE
13 INITIAL HEARING IF THE ISSUE OF RELOCATION IS PRESENTED; TO
14 PROVIDE SANCTION FOR UNWARRANTED OR FRIVOLOUS PROPOSALS; TO
15 PROVIDE CONTINUING JURISDICTION; TO AMEND SECTIONS 93-5-23 AND
16 93-11-65, MISSISSIPPI CODE OF 1972, IN CONFORMITY TO THE
17 PROVISIONS OF THIS ACT; AND FOR RELATED PURPOSES.

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

19 **SECTION 1.** The following words and phrases shall have the
20 meanings ascribed herein unless the context clearly indicates
21 otherwise:

22 (a) "Equal physical custody" means that the parents
23 share equal parental authority of the child absent a court order
24 to the contrary.

25 (b) "Parent entitled to primary custody" means a parent
26 designated by a court order as the sole custodian or primary or
27 domiciliary custodian within a joint custody arrangement.

28 (c) "Principal residence of a child" means:

29 (i) The location designated by a court to be the
30 primary residence of the child.

31 (ii) In the absence of a court order, the location
32 at which the parties have expressly agreed that the child will
33 primarily reside.

34 (iii) In the absence of a court order or an
35 express agreement, the location, if any, at which the child has
36 spent the majority of time during the prior six (6) months.

37 (d) "Relocation" means:

38 (i) Intent to establish legal residence with the
39 child at any location outside of the state.

40 (ii) If there is no court order awarding custody,
41 an intent to establish legal residence with the child at any
42 location within the state that is at a distance of more than one
43 hundred fifty (150) miles from the other parent. If there is a
44 court order awarding custody, then an intent to establish legal
45 residence with the child at a distance of more than one hundred
46 fifty (150) miles from the domicile of the primary custodian at
47 the time the custody decree was rendered.

48 (iii) A change in the principal residence of a
49 child for a period of sixty (60) days or more, but does not
50 include a temporary absence from the principal residence.

51 **SECTION 2.** (1) This act shall apply to an order regarding
52 custody of or visitation with a child issued:

53 (a) On or after July 1, 2002.

54 (b) Before July 1, 2002, if the existing custody order
55 does not expressly govern the relocation of the child.

56 (2) To the extent that a provision of this act conflicts
57 with an existing custody order, this act shall not apply to the
58 terms of that order that governs relocation of the child.

59 (3) This act shall not apply when:

60 (a) The parents of a child have entered into an express
61 written agreement for a temporary relocation of that child's
62 principal residence, regardless of the duration of the temporary
63 relocation.

64 (b) An order issued pursuant to any restraining order,
65 preliminary injunction, permanent injunction, or any protection

66 order prohibiting a spouse from harming or going near or in the
67 proximity of the other spouse is in effect.

68 **SECTION 3.** (1) A parent entitled to primary custody of a
69 child shall notify the other parent of a proposed relocation of
70 the child's principal residence as required by Section 4 of this
71 act.

72 (2) If both parents have equal physical custody of a child,
73 a parent shall notify the other parent of a proposed relocation of
74 the child's principal residence as required by Section 4 of this
75 act.

76 (3) In the absence of a court order or express written
77 agreement confected by the parties which designates the principal
78 residence of a child, a parent shall notify the other parent of a
79 proposed relocation of the child's principal residence as required
80 by Section 4 of this act.

81 **SECTION 4.** (1) Notice of a proposed relocation of the
82 principal residence of a child shall be given by registered or
83 certified mail, return receipt requested, to the last known
84 address of the parent no later than either:

85 (a) The thirtieth day before the date of the intended
86 move or proposed relocation.

87 (b) The tenth day after the date that the parent knows
88 the information required to be furnished by subsection (2) of this
89 section, if the parent did not know and could not reasonably have
90 known the information in sufficient time to comply with the
91 thirty-day notice, and it is not reasonably possible to extend the
92 time for relocation of the child.

93 (2) The following information, if available, shall be
94 included with the notice of intended relocation of the child:

95 (a) The intended new residence, including the specific
96 address, if known.

97 (b) The mailing address, if not the same.

98 (c) The home telephone number, if known.

99 (d) The date of the intended move or proposed
100 relocation.

101 (e) A brief statement of the specific reasons for the
102 proposed relocation of a child, if applicable.

103 (f) A proposal for a revised schedule of visitation
104 with the child.

105 (3) A parent required to give notice of a proposed
106 relocation shall have a continuing duty to provide the information
107 required by this section as that information becomes known.

108 **SECTION 5.** A parent seeking to relocate the principal
109 residence of a child shall not, absent consent, remove the child
110 pending resolution of dispute, or final order of the court, unless
111 the parent obtains a temporary order to do so pursuant to Section
112 10 of this act.

113 **SECTION 6.** The court may consider a failure to provide
114 notice of a proposed relocation of a child or relocation without
115 court authorization as provided by Sections 3 and 4 of this act
116 as:

117 (a) A factor in making its determination regarding the
118 relocation of a child.

119 (b) A basis for ordering the return of the child if the
120 relocation has taken place without notice or court authorization.

121 (c) Sufficient cause to order the parent seeking to
122 relocate the child to pay reasonable expenses and attorney's fees
123 incurred by the person objecting to the relocation.

124 **SECTION 7.** The primary custodian of a child or a parent who
125 has equal physical custody may relocate the principal residence of
126 a child after providing notice as provided by Sections 3 and 4 of
127 this act unless the parent entitled to notice initiates a
128 proceeding seeking a temporary or permanent order to prevent the
129 relocation within twenty (20) days after the receipt of the
130 notice.

131 **SECTION 8.** (1) A parent must initiate a summary proceeding
132 objecting to a proposed relocation of the principal residence of a
133 child within twenty (20) days after receipt of notice and seek a
134 temporary or permanent order to prevent the relocation.

135 (2) Upon request of a copy of notice of objection, the court
136 may promptly appoint an independent mental health expert to render
137 a determination as to whether the proposed relocation is in the
138 best interest of the child.

139 **SECTION 9.** A hearing on either a temporary or permanent
140 order permitting or restricting relocation shall be accorded
141 appropriate priority on the court's docket.

142 **SECTION 10.** (1) The court may grant, after a notice of
143 objection has been filed, a temporary order allowing a parent to
144 relocate.

145 (2) The court, upon the request of the moving parent, may
146 hold a limited evidentiary hearing on the proposed relocation but
147 may not grant court authorization to remove the child on an ex
148 parte basis.

149 (3) If the court issues a temporary order authorizing a
150 parent to relocate with the child, the court may not give undue
151 weight to the temporary relocation as a factor in reaching its
152 final determination.

153 (4) If temporary relocation of a child is permitted, the
154 court may require the parent relocating the child to provide
155 reasonable security guaranteeing that the court ordered visitation
156 with the child will not be interrupted or interfered with by the
157 relocating parent or that the relocating parent will return the
158 child if court authorization for the removal is denied at the
159 final hearing.

160 **SECTION 11.** Providing notice of a proposed relocation of a
161 child shall not constitute a change of circumstance warranting a
162 change of custody. Moving without prior notice or moving in

163 violation of a court order may constitute a change of
164 circumstances warranting a modification of custody.

165 **SECTION 12.** In reaching its decision regarding a proposed
166 relocation, the court shall consider the following factors:

167 (a) The nature, quality, extent of involvement, and
168 duration of the child's relationship with the parent proposing to
169 relocate and with the nonrelocating parent, siblings and other
170 significant persons in the child's life.

171 (b) The age, developmental stage, needs of the child,
172 and the likely impact the relocation will have on the child's
173 physical, educational and emotional development, taking into
174 consideration any special needs of the child.

175 (c) The feasibility of preserving the relationship
176 between the nonrelocating parent and the child through suitable
177 visitation arrangements, considering the logistics and financial
178 circumstances of the parties.

179 (d) The child's preference, taking into consideration
180 the age and maturity of the child.

181 (e) Whether there is an established pattern of conduct
182 of the parent seeking the relocation, either to promote or thwart
183 the relationship of the child and the nonrelocating party.

184 (f) Whether the relocation of the child will enhance
185 the general quality of life for both the custodial parent seeking
186 the relocation and the child, including but not limited to,
187 financial or emotional benefit or educational opportunity.

188 (g) The reasons of each parent for seeking or opposing
189 the relocation.

190 (h) Any other factors affecting the best interest of
191 the child.

192 **SECTION 13.** The relocating parent has the burden of proof
193 that the proposed relocation is made in good faith and is in the
194 best interest of the child.

195 **SECTION 14.** If relocation of a child is permitted, the court
196 may require the parent relocating the child to provide reasonable
197 security guaranteeing that the court ordered visitation with the
198 child will not be interrupted or interfered with by the relocating
199 party.

200 **SECTION 15.** If the issue of relocation is presented at the
201 initial hearing to determine custody of and visitation with a
202 child, the court shall apply the factors set forth in Section 12
203 of this act in making its initial determination.

204 **SECTION 16.** (1) After notice and a reasonable opportunity
205 to respond, the court may impose a sanction on a parent proposing
206 a relocation of the child or objecting to a proposed relocation of
207 a child it determines that the proposal was made or the objection
208 was filed:

209 (a) To harass the other parent or to cause unnecessary
210 delay or needless increase in the cost of litigation.

211 (b) Without being warranted by existing law or based on
212 a frivolous argument.

213 (c) Based on allegations and other factual contentions
214 which have no evidentiary support nor, if specifically so
215 identified, could not have been reasonably believed to be likely
216 to have evidentiary support after further investigation.

217 (2) A sanction imposed under this section shall be limited
218 to what is sufficient to deter repetition of such conduct or
219 comparable conduct by others similarly situated. The sanction may
220 consist of, or include, directives of a nonmonetary nature, an
221 order to pay a penalty to the court, or, if imposed on motion and
222 warranted for effective deterrence, an order directing payment to
223 the movant of some or all of the reasonable attorneys' fees and
224 other expenses incurred as a direct result of the violation.

225 **SECTION 17.** If the court grants authorization to relocate,
226 the court may retain continuing, exclusive jurisdiction of the

227 case after relocation of the child as long as the nonrelocating
228 parent remains in the state.

229 **SECTION 18.** Section 93-5-23, Mississippi Code of 1972, is
230 amended as follows:

231 93-5-23. When a divorce shall be decreed from the bonds of
232 matrimony, the court may, in its discretion, having regard to the
233 circumstances of the parties and the nature of the case, as may
234 seem equitable and just, make all orders touching the care,
235 custody and maintenance of the children of the marriage, and also
236 touching the maintenance and alimony of the wife or the husband,
237 or any allowance to be made to her or him, and shall, if need be,
238 require bond, sureties or other guarantee for the payment of the
239 sum so allowed. Orders touching on the custody of the children of
240 the marriage shall be made in accordance with the provisions of
241 Section 93-5-24. The court may afterwards, on petition, change
242 the decree, and make from time to time such new decrees as the
243 case may require. However, where proof shows that both parents
244 have separate incomes or estates, the court may require that each
245 parent contribute to the support and maintenance of the children
246 of the marriage in proportion to the relative financial ability of
247 each. In the event a legally responsible parent has health
248 insurance available to him or her through an employer or
249 organization that may extend benefits to the dependents of such
250 parent, any order of support issued against such parent may
251 require him or her to exercise the option of additional coverage
252 in favor of such children as he or she is legally responsible to
253 support.

254 Whenever the court has ordered a party to make periodic
255 payments for the maintenance or support of a child, but no bond,
256 sureties or other guarantee has been required to secure such
257 payments, and whenever such payments as have become due remain
258 unpaid for a period of at least thirty (30) days, the court may,
259 upon petition of the person to whom such payments are owing, or

260 such person's legal representative, enter an order requiring that
261 bond, sureties or other security be given by the person obligated
262 to make such payments, the amount and sufficiency of which shall
263 be approved by the court. The obligor shall, as in other civil
264 actions, be served with process and shall be entitled to a hearing
265 in such case.

266 Whenever in any proceeding in the chancery court concerning
267 the custody of a child a party alleges that the child whose
268 custody is at issue has been the victim of sexual or physical
269 abuse by the other party, the court may, on its own motion, grant
270 a continuance in the custody proceeding only until such allegation
271 has been investigated by the Department of Human Services. At the
272 time of ordering such continuance the court may direct the party,
273 and his attorney, making such allegation of child abuse to report
274 in writing and provide all evidence touching on the allegation of
275 abuse to the Department of Human Services. The Department of
276 Human Services shall investigate such allegation and take such
277 action as it deems appropriate and as provided in such cases under
278 the Youth Court Law (being Chapter 21 of Title 43, Mississippi
279 Code of 1972) or under the laws establishing family courts (being
280 Chapter 23 of Title 43, Mississippi Code of 1972).

281 If after investigation by the Department of Human Services or
282 final disposition by the youth court or family court allegations
283 of child abuse are found to be without foundation, the chancery
284 court shall order the alleging party to pay all court costs and
285 reasonable attorney's fees incurred by the defending party in
286 responding to such allegation.

287 The court may investigate, hear and make a determination in a
288 custody action when a charge of abuse and/or neglect arises in the
289 course of a custody action as provided in Section 43-21-151, and
290 in such cases the court shall appoint a guardian ad litem for the
291 child as provided under Section 43-21-121, who shall be an
292 attorney. Unless the chancery court's jurisdiction has been

293 terminated, all disposition orders in such cases for placement
294 with the Department of Human Services shall be reviewed by the
295 court or designated authority at least annually to determine if
296 continued placement with the department is in the best interest of
297 the child or public.

298 The duty of support of a child terminates upon the
299 emancipation of the child. The court may determine that
300 emancipation has occurred and no other support obligation exists
301 when the child:

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

303 (b) Marries, or

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

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

311 The court is authorized to issue orders regarding the
312 relocation of a child's residence as provided in Sections 1
313 through 17 of House Bill No. _____, 2004 Regular Session.

314 **SECTION 19.** Section 93-11-65, Mississippi Code of 1972, is
315 amended as follows:

316 93-11-65. (1) (a) In addition to the right to proceed
317 under Section 93-5-23, Mississippi Code of 1972, and in addition
318 to the remedy of habeas corpus in proper cases, and other existing
319 remedies, the chancery court of the proper county shall have
320 jurisdiction to entertain suits for the custody, care, support and
321 maintenance of minor children and to hear and determine all such
322 matters, and shall, if need be, require bond, sureties or other
323 guarantee to secure any order for periodic payments for the
324 maintenance or support of a child. In the event a legally
325 responsible parent has health insurance available to him or her

326 through an employer or organization that may extend benefits to
327 the dependents of such parent, any order of support issued against
328 such parent may require him or her to exercise the option of
329 additional coverage in favor of such children as he or she is
330 legally responsible to support. Proceedings may be brought by or
331 against a resident or nonresident of the State of Mississippi,
332 whether or not having the actual custody of minor children, for
333 the purpose of judicially determining the legal custody of a
334 child. All actions herein authorized may be brought in the county
335 where the child is actually residing, or in the county of the
336 residence of the party who has actual custody, or of the residence
337 of the defendant. Process shall be had upon the parties as
338 provided by law for process in person or by publication, if they
339 be nonresidents of the state or residents of another jurisdiction
340 or are not found therein after diligent search and inquiry or are
341 unknown after diligent search and inquiry; provided that the court
342 or chancellor in vacation may fix a date in termtime or in
343 vacation to which process may be returnable and shall have power
344 to proceed in termtime or vacation. Provided, however, that if
345 the court shall find that both parties are fit and proper persons
346 to have custody of the children, and that either party is able to
347 adequately provide for the care and maintenance of the children,
348 and that it would be to the best interest and welfare of the
349 children, then any such child who shall have reached his twelfth
350 birthday shall have the privilege of choosing the parent with whom
351 he shall live.

352 (b) An order of child support shall specify the sum to
353 be paid weekly or otherwise. In addition to providing for support
354 and education, the order shall also provide for the support of the
355 child prior to the making of the order for child support, and such
356 other expenses as the court may deem proper.

357 (c) The court may require the payment to be made to the
358 custodial parent, or to some person or corporation to be

359 designated by the court as trustee, but if the child or custodial
360 parent is receiving public assistance, the Department of Human
361 Services shall be made the trustee.

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

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

370 (3) Whenever the court has ordered a party to make periodic
371 payments for the maintenance or support of a child, but no bond,
372 sureties or other guarantee has been required to secure such
373 payments, and whenever such payments as have become due remain
374 unpaid for a period of at least thirty (30) days, the court may,
375 upon petition of the person to whom such payments are owing, or
376 such person's legal representative, enter an order requiring that
377 bond, sureties or other security be given by the person obligated
378 to make such payments, the amount and sufficiency of which shall
379 be approved by the court. The obligor shall, as in other civil
380 actions, be served with process and shall be entitled to a hearing
381 in such case.

382 (4) When a charge of abuse or neglect of a child first
383 arises in the course of a custody or maintenance action pending in
384 the chancery court pursuant to this section, the chancery court
385 may proceed with the investigation, hearing and determination of
386 such abuse or neglect charge as a part of its hearing and
387 determination of the custody or maintenance issue as between the
388 parents, as provided in Section 43-21-151, notwithstanding the
389 other provisions of the Youth Court Law. The proceedings in
390 chancery court on the abuse or neglect charge shall be
391 confidential in the same manner as provided in youth court

392 proceedings, and the chancery court shall appoint a guardian ad
393 litem in such cases, as provided under Section 43-21-121 for youth
394 court proceedings, who shall be an attorney. Unless the chancery
395 court's jurisdiction has been terminated, all disposition orders
396 in such cases for placement with the Department of Human Services
397 shall be reviewed by the court or designated authority at least
398 annually to determine if continued placement with the department
399 is in the best interest of the child or the public.

400 (5) Each party to a paternity or child support proceeding
401 shall notify the other within five (5) days after any change of
402 address. In addition, the noncustodial and custodial parent shall
403 file and update, with the court and with the state case registry,
404 information on that party's location and identity, including
405 social security number, residential and mailing addresses,
406 telephone numbers, photograph, driver's license number, and name,
407 address and telephone number of the party's employer. This
408 information shall be required upon entry of an order or within
409 five (5) days of a change of address.

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

413 (7) In any subsequent child support enforcement action
414 between the parties, upon sufficient showing that diligent effort
415 has been made to ascertain the location of a party, due process
416 requirements for notice and service of process shall be deemed to
417 be met with respect to the party upon delivery of written notice
418 to the most recent residential or employer address filed with the
419 state case registry.

420 (8) The duty of support of a child terminates upon the
421 emancipation of the child. The court may determine that
422 emancipation has occurred and no other support obligation exists
423 when the child:

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

425 (b) Marries, or

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

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

433 (9) Upon motion of a party requesting temporary child
434 support pending a determination of parentage, temporary support
435 shall be ordered if there is clear and convincing evidence of
436 paternity on the basis of genetic tests or other evidence, unless
437 the court makes written findings of fact on the record that the
438 award of temporary support would be unjust or inappropriate in a
439 particular case.

440 (10) The court is authorized to issue orders regarding the
441 relocation of a child's residence as provided in Section 1 through
442 17 of House Bill No. ____, 2004 Regular Session.

443 **SECTION 20.** This act shall take effect and be in force from
444 and after July 1, 2004.