

By: Representative Carlton (By Request)

To: Judiciary A

HOUSE BILL NO. 761

1 AN ACT TO AMEND SECTION 93-5-23, MISSISSIPPI CODE OF 1972, TO
2 PROVIDE FOR A HEARING TO DETERMINE IF GRANDPARENTS SERVING IN LOCO
3 PARENTIS SHOULD BE AWARDED CUSTODY WHEN THE CUSTODIAL PARENT DIES;
4 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. When a divorce shall be decreed from the bonds of
9 matrimony, the court may, in its discretion, having regard to the
10 circumstances of the parties and the nature of the case, as may
11 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 When a parent with physical and legal custody dies and the
32 grandparents of the child have served in loco parentis, the court
33 shall conduct a hearing to determine if the best interest of the
34 child would be served by awarding custody of the child to such
35 grandparents.

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

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

61 Code of 1972) or under the laws establishing family courts (being
62 Chapter 23 of Title 43, Mississippi Code of 1972).

63 If after investigation by the Department of Human Services or
64 final disposition by the youth court or family court allegations
65 of child abuse are found to be without foundation, the chancery
66 court shall order the alleging party to pay all court costs and
67 reasonable attorney's fees incurred by the defending party in
68 responding to such allegation.

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

80 The duty of support of a child terminates upon the
81 emancipation of the child. The court may determine that
82 emancipation has occurred and no other support obligation exists
83 when the child:

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

85 (b) Marries, or

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

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

93 **SECTION 2.** This act shall take effect and be in force from
94 and after July 1, 2006.