

By: Senator(s) Nunnelee

To: Judiciary, Division A

SENATE BILL NO. 2541

1 AN ACT TO AMEND SECTIONS 93-5-23 AND 93-11-65, MISSISSIPPI  
2 CODE OF 1972, TO REVISE THE DEFINITION OF EMANCIPATION OF A MINOR  
3 AS REGARDS CHILD SUPPORT; AND FOR RELATED PURPOSES.

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

5 **SECTION 1.** Section 93-5-23, Mississippi Code of 1972, is  
6 amended as follows:

7 93-5-23. When a divorce shall be decreed from the bonds of  
8 matrimony, the court may, in its discretion, having regard to the  
9 circumstances of the parties and the nature of the case, as may  
10 seem equitable and just, make all orders touching the care,  
11 custody and maintenance of the children of the marriage, and also  
12 touching the maintenance and alimony of the wife or the husband,  
13 or any allowance to be made to her or him, and shall, if need be,  
14 require bond, sureties or other guarantee for the payment of the  
15 sum so allowed. Orders touching on the custody of the children of  
16 the marriage shall be made in accordance with the provisions of  
17 Section 93-5-24. The court may afterwards, on petition, change  
18 the decree, and make from time to time such new decrees as the  
19 case may require. However, where proof shows that both parents  
20 have separate incomes or estates, the court may require that each  
21 parent contribute to the support and maintenance of the children  
22 of the marriage in proportion to the relative financial ability of  
23 each. In the event a legally responsible parent has health  
24 insurance available to him or her through an employer or  
25 organization that may extend benefits to the dependents of such  
26 parent, any order of support issued against such parent may  
27 require him or her to exercise the option of additional coverage

28 in favor of such children as he or she is legally responsible to  
29 support.

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

42 Whenever in any proceeding in the chancery court concerning  
43 the custody of a child a party alleges that the child whose  
44 custody is at issue has been the victim of sexual or physical  
45 abuse by the other party, the court may, on its own motion, grant  
46 a continuance in the custody proceeding only until such allegation  
47 has been investigated by the Department of Human Services. At the  
48 time of ordering such continuance, the court may direct the party  
49 and his attorney making such allegation of child abuse to report  
50 in writing and provide all evidence touching on the allegation of  
51 abuse to the Department of Human Services. The Department of  
52 Human Services shall investigate such allegation and take such  
53 action as it deems appropriate and as provided in such cases under  
54 the Youth Court Law (being Chapter 21 of Title 43, Mississippi  
55 Code of 1972) or under the laws establishing family courts (being  
56 Chapter 23 of Title 43, Mississippi Code of 1972).

57 If after investigation by the Department of Human Services or  
58 final disposition by the youth court or family court allegations  
59 of child abuse are found to be without foundation, the chancery  
60 court shall order the alleging party to pay all court costs and

61 reasonable attorney's fees incurred by the defending party in  
62 responding to such allegation.

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

74 The duty of support of a child terminates upon the  
75 emancipation of the child. The court may determine that  
76 emancipation has occurred pursuant to Section 93-11-65.

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

79 93-11-65. (1) (a) In addition to the right to proceed  
80 under Section 93-5-23, Mississippi Code of 1972, and in addition  
81 to the remedy of habeas corpus in proper cases, and other existing  
82 remedies, the chancery court of the proper county shall have  
83 jurisdiction to entertain suits for the custody, care, support and  
84 maintenance of minor children and to hear and determine all such  
85 matters, and shall, if need be, require bond, sureties or other  
86 guarantee to secure any order for periodic payments for the  
87 maintenance or support of a child. In the event a legally  
88 responsible parent has health insurance available to him or her  
89 through an employer or organization that may extend benefits to  
90 the dependents of such parent, any order of support issued against  
91 such parent may require him or her to exercise the option of  
92 additional coverage in favor of such children as he or she is  
93 legally responsible to support. Proceedings may be brought by or

94 against a resident or nonresident of the State of Mississippi,  
95 whether or not having the actual custody of minor children, for  
96 the purpose of judicially determining the legal custody of a  
97 child. All actions herein authorized may be brought in the county  
98 where the child is actually residing, or in the county of the  
99 residence of the party who has actual custody, or of the residence  
100 of the defendant. Process shall be had upon the parties as  
101 provided by law for process in person or by publication, if they  
102 be nonresidents of the state or residents of another jurisdiction  
103 or are not found therein after diligent search and inquiry or are  
104 unknown after diligent search and inquiry; provided that the court  
105 or chancellor in vacation may fix a date in termtime or in  
106 vacation to which process may be returnable and shall have power  
107 to proceed in termtime or vacation. Provided, however, that if  
108 the court shall find that both parties are fit and proper persons  
109 to have custody of the children, and that either party is able to  
110 adequately provide for the care and maintenance of the children,  
111 and that it would be to the best interest and welfare of the  
112 children, then any such child who shall have reached his twelfth  
113 birthday shall have the privilege of choosing the parent with whom  
114 he shall live.

115 (b) An order of child support shall specify the sum to  
116 be paid weekly or otherwise. In addition to providing for support  
117 and education, the order shall also provide for the support of the  
118 child prior to the making of the order for child support, and such  
119 other expenses as the court may deem proper.

120 (c) The court may require the payment to be made to the  
121 custodial parent, or to some person or corporation to be  
122 designated by the court as trustee, but if the child or custodial  
123 parent is receiving public assistance, the Department of Human  
124 Services shall be made the trustee.

125 (d) The noncustodial parent's liabilities for past  
126 education and necessary support and maintenance and other expenses

127 are limited to a period of one (1) year next preceding the  
128 commencement of an action.

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

133 (3) Whenever the court has ordered a party to make periodic  
134 payments for the maintenance or support of a child, but no bond,  
135 sureties or other guarantee has been required to secure such  
136 payments, and whenever such payments as have become due remain  
137 unpaid for a period of at least thirty (30) days, the court may,  
138 upon petition of the person to whom such payments are owing, or  
139 such person's legal representative, enter an order requiring that  
140 bond, sureties or other security be given by the person obligated  
141 to make such payments, the amount and sufficiency of which shall  
142 be approved by the court. The obligor shall, as in other civil  
143 actions, be served with process and shall be entitled to a hearing  
144 in such case.

145 (4) When a charge of abuse or neglect of a child first  
146 arises in the course of a custody or maintenance action pending in  
147 the chancery court pursuant to this section, the chancery court  
148 may proceed with the investigation, hearing and determination of  
149 such abuse or neglect charge as a part of its hearing and  
150 determination of the custody or maintenance issue as between the  
151 parents, as provided in Section 43-21-151, notwithstanding the  
152 other provisions of the Youth Court Law. The proceedings in  
153 chancery court on the abuse or neglect charge shall be  
154 confidential in the same manner as provided in youth court  
155 proceedings, and the chancery court shall appoint a guardian ad  
156 litem in such cases, as provided under Section 43-21-121 for youth  
157 court proceedings, who shall be an attorney. Unless the chancery  
158 court's jurisdiction has been terminated, all disposition orders  
159 in such cases for placement with the Department of Human Services

160 shall be reviewed by the court or designated authority at least  
161 annually to determine if continued placement with the department  
162 is in the best interest of the child or the public.

163 (5) Each party to a paternity or child support proceeding  
164 shall notify the other within five (5) days after any change of  
165 address. In addition, the noncustodial and custodial parent shall  
166 file and update, with the court and with the state case registry,  
167 information on that party's location and identity, including  
168 social security number, residential and mailing addresses,  
169 telephone numbers, photograph, driver's license number, and name,  
170 address and telephone number of the party's employer. This  
171 information shall be required upon entry of an order or within  
172 five (5) days of a change of address.

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

176 (7) In any subsequent child support enforcement action  
177 between the parties, upon sufficient showing that diligent effort  
178 has been made to ascertain the location of a party, due process  
179 requirements for notice and service of process shall be deemed to  
180 be met with respect to the party upon delivery of written notice  
181 to the most recent residential or employer address filed with the  
182 state case registry.

183 (8) The duty of support of a child terminates upon the  
184 emancipation of the child. The court may determine that  
185 emancipation has occurred and no other support obligation exists  
186 when the child:

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

188 (b) Marries, or

189 (c) Discontinues full-time enrollment in school \* \* \*

190 having attained the age of eighteen (18) years, unless the child  
191 is disabled, or

192           (d) Voluntarily moves from the home of the custodial  
193 parent or guardian, establishes independent living arrangements,  
194 and obtains full-time employment prior to attaining the age of  
195 twenty-one (21) years, or

196           (e) Joins the military, or

197           (f) Is convicted of a felony, or

198           (g) Is incarcerated for committing a felony, or

199           (h) Cohabits as if married.

200           (9) A determination of emancipation does not terminate any  
201 obligation of the noncustodial parent to satisfy arrearage  
202 existing as of the date of emancipation; the total amount of  
203 periodic support due prior to the emancipation plus any periodic  
204 amounts ordered paid toward the arrearage shall continue to be  
205 owed until satisfaction of the arrearage in full.

206           (10) Upon motion of a party requesting temporary child  
207 support pending a determination of parentage, temporary support  
208 shall be ordered if there is clear and convincing evidence of  
209 paternity on the basis of genetic tests or other evidence, unless  
210 the court makes written findings of fact on the record that the  
211 award of temporary support would be unjust or inappropriate in a  
212 particular case.

213           **SECTION 3.** This act shall take effect and be in force from  
214 and after July 1, 2006.