

By: Senator(s) Nunnelee

To: Judiciary, Division A

SENATE BILL NO. 2541
(As Sent to Governor)

1 AN ACT TO AMEND SECTION 93-5-23 MISSISSIPPI CODE OF 1972, AND
2 SECTION 93-11-65, MISSISSIPPI CODE OF 1972, AS AMENDED BY SENATE
3 BILL NO. 2838, 2006 REGULAR SESSION, TO REVISE THE DEFINITION OF
4 EMANCIPATION OF A MINOR AS REGARDS CHILD SUPPORT; AND FOR RELATED
5 PURPOSES.

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

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

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

29 require him or her to exercise the option of additional coverage
30 in favor of such children as he or she is legally responsible to
31 support.

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

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

59 If after investigation by the Department of Human Services or
60 final disposition by the youth court or family court allegations
61 of child abuse are found to be without foundation, the chancery

62 court shall order the alleging party to pay all court costs and
63 reasonable attorney's fees incurred by the defending party in
64 responding to such allegation.

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

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

79 **SECTION 2.** Section 93-11-65, Mississippi Code of 1972, as
80 amended by Senate Bill No. 2838, 2006 Regular Session, is amended
81 as follows:

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

95 additional coverage in favor of such children as he or she is
96 legally responsible to support. Proceedings may be brought by or
97 against a resident or nonresident of the State of Mississippi,
98 whether or not having the actual custody of minor children, for
99 the purpose of judicially determining the legal custody of a
100 child. All actions herein authorized may be brought in the county
101 where the child is actually residing, or in the county of the
102 residence of the party who has actual custody, or of the residence
103 of the defendant. Process shall be had upon the parties as
104 provided by law for process in person or by publication, if they
105 be nonresidents of the state or residents of another jurisdiction
106 or are not found therein after diligent search and inquiry or are
107 unknown after diligent search and inquiry; provided that the court
108 or chancellor in vacation may fix a date in termtime or in
109 vacation to which process may be returnable and shall have power
110 to proceed in termtime or vacation. Provided, however, that if
111 the court shall find that both parties are fit and proper persons
112 to have custody of the children, and that either party is able to
113 adequately provide for the care and maintenance of the children,
114 the chancellor may consider the preference of a child of twelve
115 (12) years of age or older as to the parent with whom the child
116 would prefer to live in determining what would be in the best
117 interest and welfare of the child. The chancellor shall place on
118 the record the reason or reasons for which the award of custody
119 was made and explain in detail why the wishes of any child were or
120 were not honored.

121 (b) An order of child support shall specify the sum to
122 be paid weekly or otherwise. In addition to providing for support
123 and education, the order shall also provide for the support of the
124 child prior to the making of the order for child support, and such
125 other expenses as the court may deem proper.

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

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

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

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

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

151 (4) When a charge of abuse or neglect of a child first
152 arises in the course of a custody or maintenance action pending in
153 the chancery court pursuant to this section, the chancery court
154 may proceed with the investigation, hearing and determination of
155 such abuse or neglect charge as a part of its hearing and
156 determination of the custody or maintenance issue as between the
157 parents, as provided in Section 43-21-151, notwithstanding the
158 other provisions of the Youth Court Law. The proceedings in
159 chancery court on the abuse or neglect charge shall be
160 confidential in the same manner as provided in youth court

161 proceedings, and the chancery court shall appoint a guardian ad
162 litem in such cases, as provided under Section 43-21-121 for youth
163 court proceedings, who shall be an attorney. In determining
164 whether any portion of a guardian ad litem's fee shall be assessed
165 against any party or parties as a cost of court for reimbursement
166 to the county, the court shall consider each party's individual
167 ability to pay. Unless the chancery court's jurisdiction has been
168 terminated, all disposition orders in such cases for placement
169 with the Department of Human Services shall be reviewed by the
170 court or designated authority at least annually to determine if
171 continued placement with the department is in the best interest of
172 the child or the public.

173 (5) Each party to a paternity or child support proceeding
174 shall notify the other within five (5) days after any change of
175 address. In addition, the noncustodial and custodial parent shall
176 file and update, with the court and with the state case registry,
177 information on that party's location and identity, including
178 social security number, residential and mailing addresses,
179 telephone numbers, photograph, driver's license number, and name,
180 address and telephone number of the party's employer. This
181 information shall be required upon entry of an order or within
182 five (5) days of a change of address.

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

186 (7) In any subsequent child support enforcement action
187 between the parties, upon sufficient showing that diligent effort
188 has been made to ascertain the location of a party, due process
189 requirements for notice and service of process shall be deemed to
190 be met with respect to the party upon delivery of written notice
191 to the most recent residential or employer address filed with the
192 state case registry.

193 (8) The duty of support of a child terminates upon the
194 emancipation of the child. The court may determine that
195 emancipation has occurred and no other support obligation exists
196 when the child:

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

198 (b) Marries, or

199 (c) Discontinues full-time enrollment in school having
200 attained the age of eighteen (18) years, unless the child is
201 disabled, or

202 (d) Voluntarily moves from the home of the custodial
203 parent or guardian, establishes independent living arrangements,
204 obtains full-time employment and discontinues educational
205 endeavors prior to attaining the age of twenty-one (21) years, or

206 (e) Joins the military and serves on a full-time basis,
207 or

208 (f) Is convicted of a felony and is incarcerated for
209 committing such felony, or

210 (g) Cohabits with another person without the approval
211 of the parent obligated to pay support.

212 (9) A determination of emancipation does not terminate any
213 obligation of the noncustodial parent to satisfy arrearage
214 existing as of the date of emancipation; the total amount of
215 periodic support due prior to the emancipation plus any periodic
216 amounts ordered paid toward the arrearage shall continue to be
217 owed until satisfaction of the arrearage in full, in addition to
218 the right of the person for whom the obligation is owed to execute
219 for collection as may be provided by law.

220 (10) Upon motion of a party requesting temporary child
221 support pending a determination of parentage, temporary support
222 shall be ordered if there is clear and convincing evidence of
223 paternity on the basis of genetic tests or other evidence, unless
224 the court makes written findings of fact on the record that the

225 award of temporary support would be unjust or inappropriate in a
226 particular case.

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