

By: Senator(s) Dearing

To: Judiciary, Division A

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 2838

1 AN ACT TO AMEND SECTION 93-11-65, MISSISSIPPI CODE OF 1972,
2 TO CLARIFY THE RESPONSIBILITY OF THE CHANCELLOR IN AWARDING
3 CUSTODY OF A CHILD WHO HAS REACHED HIS TWELFTH BIRTHDAY; AND FOR
4 RELATED PURPOSES.

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

6 **SECTION 1.** Section 93-11-65, Mississippi Code of 1972, is
7 amended as follows:

8 93-11-65. (1) (a) In addition to the right to proceed
9 under Section 93-5-23, Mississippi Code of 1972, and in addition
10 to the remedy of habeas corpus in proper cases, and other existing
11 remedies, the chancery court of the proper county shall have
12 jurisdiction to entertain suits for the custody, care, support and
13 maintenance of minor children and to hear and determine all such
14 matters, and shall, if need be, require bond, sureties or other
15 guarantee to secure any order for periodic payments for the
16 maintenance or support of a child. In the event a legally
17 responsible parent has health insurance available to him or her
18 through an employer or organization that may extend benefits to
19 the dependents of such parent, any order of support issued against
20 such parent may require him or her to exercise the option of
21 additional coverage in favor of such children as he or she is
22 legally responsible to support. Proceedings may be brought by or
23 against a resident or nonresident of the State of Mississippi,
24 whether or not having the actual custody of minor children, for
25 the purpose of judicially determining the legal custody of a
26 child. All actions herein authorized may be brought in the county
27 where the child is actually residing, or in the county of the
28 residence of the party who has actual custody, or of the residence

29 of the defendant. Process shall be had upon the parties as
30 provided by law for process in person or by publication, if they
31 be nonresidents of the state or residents of another jurisdiction
32 or are not found therein after diligent search and inquiry or are
33 unknown after diligent search and inquiry; provided that the court
34 or chancellor in vacation may fix a date in termtime or in
35 vacation to which process may be returnable and shall have power
36 to proceed in termtime or vacation. Provided, however, that if
37 the court shall find that both parties are fit and proper persons
38 to have custody of the children, and that either party is able to
39 adequately provide for the care and maintenance of the children,
40 the chancellor may consider the preference of a child of twelve
41 (12) years or older as to the parent with whom the child would
42 prefer to live in determining what would be in the best interest
43 and welfare of the child. The chancellor shall place on the
44 record the reason or reasons for which the award of custody was
45 made and explain in detail why the wishes of any child were or
46 were not honored.

47 (b) An order of child support shall specify the sum to
48 be paid weekly or otherwise. In addition to providing for support
49 and education, the order shall also provide for the support of the
50 child prior to the making of the order for child support, and such
51 other expenses as the court may deem proper.

52 (c) The court may require the payment to be made to the
53 custodial parent, or to some person or corporation to be
54 designated by the court as trustee, but if the child or custodial
55 parent is receiving public assistance, the Department of Human
56 Services shall be made the trustee.

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

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

65 (3) Whenever the court has ordered a party to make periodic
66 payments for the maintenance or support of a child, but no bond,
67 sureties or other guarantee has been required to secure such
68 payments, and whenever such payments as have become due remain
69 unpaid for a period of at least thirty (30) days, the court may,
70 upon petition of the person to whom such payments are owing, or
71 such person's legal representative, enter an order requiring that
72 bond, sureties or other security be given by the person obligated
73 to make such payments, the amount and sufficiency of which shall
74 be approved by the court. The obligor shall, as in other civil
75 actions, be served with process and shall be entitled to a hearing
76 in such case.

77 (4) When a charge of abuse or neglect of a child first
78 arises in the course of a custody or maintenance action pending in
79 the chancery court pursuant to this section, the chancery court
80 may proceed with the investigation, hearing and determination of
81 such abuse or neglect charge as a part of its hearing and
82 determination of the custody or maintenance issue as between the
83 parents, as provided in Section 43-21-151, notwithstanding the
84 other provisions of the Youth Court Law. The proceedings in
85 chancery court on the abuse or neglect charge shall be
86 confidential in the same manner as provided in youth court
87 proceedings, and the chancery court shall appoint a guardian ad
88 litem in such cases, as provided under Section 43-21-121 for youth
89 court proceedings, who shall be an attorney. Unless the chancery
90 court's jurisdiction has been terminated, all disposition orders
91 in such cases for placement with the Department of Human Services
92 shall be reviewed by the court or designated authority at least

93 annually to determine if continued placement with the department
94 is in the best interest of the child or the public.

95 (5) Each party to a paternity or child support proceeding
96 shall notify the other within five (5) days after any change of
97 address. In addition, the noncustodial and custodial parent shall
98 file and update, with the court and with the state case registry,
99 information on that party's location and identity, including
100 social security number, residential and mailing addresses,
101 telephone numbers, photograph, driver's license number, and name,
102 address and telephone number of the party's employer. This
103 information shall be required upon entry of an order or within
104 five (5) days of a change of address.

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

108 (7) In any subsequent child support enforcement action
109 between the parties, upon sufficient showing that diligent effort
110 has been made to ascertain the location of a party, due process
111 requirements for notice and service of process shall be deemed to
112 be met with respect to the party upon delivery of written notice
113 to the most recent residential or employer address filed with the
114 state case registry.

115 (8) The duty of support of a child terminates upon the
116 emancipation of the child. The court may determine that
117 emancipation has occurred and no other support obligation exists
118 when the child:

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

120 (b) Marries, or

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

124 (d) Voluntarily moves from the home of the custodial
125 parent or guardian and establishes independent living arrangements

126 and obtains full-time employment prior to attaining the age of
127 twenty-one (21) years.

128 (9) Upon motion of a party requesting temporary child
129 support pending a determination of parentage, temporary support
130 shall be ordered if there is clear and convincing evidence of
131 paternity on the basis of genetic tests or other evidence, unless
132 the court makes written findings of fact on the record that the
133 award of temporary support would be unjust or inappropriate in a
134 particular case.

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