

By: Senator(s) Dearing

To: Judiciary, Division A

SENATE BILL NO. 2838  
(As Passed the Senate)

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; TO  
4 PROVIDE THAT THE COURT MAY ASSESS COSTS FOR A GUARDIAN AD LITEM'S  
5 FEE BASED UPON THE PARTY'S ABILITY TO PAY; AND FOR RELATED  
6 PURPOSES.

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

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

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

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

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

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

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

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

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

79 (4) When a charge of abuse or neglect of a child first  
80 arises in the course of a custody or maintenance action pending in  
81 the chancery court pursuant to this section, the chancery court  
82 may proceed with the investigation, hearing and determination of  
83 such abuse or neglect charge as a part of its hearing and  
84 determination of the custody or maintenance issue as between the  
85 parents, as provided in Section 43-21-151, notwithstanding the  
86 other provisions of the Youth Court Law. The proceedings in  
87 chancery court on the abuse or neglect charge shall be  
88 confidential in the same manner as provided in youth court  
89 proceedings, and the chancery court shall appoint a guardian ad  
90 litem in such cases, as provided under Section 43-21-121 for youth  
91 court proceedings, who shall be an attorney. In determining  
92 whether any portion of a guardian ad litem's fee shall be assessed  
93 against any party or parties as a cost of court for reimbursement  
94 to the county, the court shall consider each party's individual  
95 ability to pay. Unless the chancery court's jurisdiction has been

96 terminated, all disposition orders in such cases for placement  
97 with the Department of Human Services shall be reviewed by the  
98 court or designated authority at least annually to determine if  
99 continued placement with the department is in the best interest of  
100 the child or the public.

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

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

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

121 (8) The duty of support of a child terminates upon the  
122 emancipation of the child. The court may determine that  
123 emancipation has occurred and no other support obligation exists  
124 when the child:

- 125 (a) Attains the age of twenty-one (21) years, or  
126 (b) Marries, or

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

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

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

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