

By: Senator(s) Burton

To: Public Health and Welfare; Appropriations

SENATE BILL NO. 2339

1 AN ACT TO AMEND SECTION 43-19-101, MISSISSIPPI CODE OF 1972,  
2 TO RAISE THE GUIDELINES FOR THE PERCENTAGE OF ADJUSTED GROSS  
3 INCOME THAT SHOULD BE AWARDED FOR CHILD SUPPORT; TO AMEND SECTION  
4 93-11-65, MISSISSIPPI CODE OF 1972, TO LOWER THE AGE OF AND DEFINE  
5 EMANCIPATION FOR CHILD SUPPORT PURPOSES; AND FOR RELATED PURPOSES.

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

7 **SECTION 1.** Section 43-19-101, Mississippi Code of 1972, is  
8 amended as follows:

9 43-19-101. (1) The following child support award guidelines  
10 shall be a rebuttable presumption in all judicial or  
11 administrative proceedings regarding the awarding or modifying of  
12 child support awards in this state:

Number Of Children	Percentage Of Adjusted Gross Income
Due Support	That Should Be Awarded For Support
1	* * * <u>17%</u>
2	* * * <u>24%</u>
3	* * * <u>26%</u>
4	* * * <u>28%</u>
5 or more	* * * <u>30%</u>



20           (2) The guidelines provided for in subsection (1) of this  
21 section apply unless the judicial or administrative body awarding  
22 or modifying the child support award makes a written finding or  
23 specific finding on the record that the application of the  
24 guidelines would be unjust or inappropriate in a particular case  
25 as determined under the criteria specified in Section 43-19-103.

26           (3) The amount of "adjusted gross income" as that term is  
27 used in subsection (1) of this section shall be calculated as  
28 follows:

29           (a) Determine gross income from all potential sources  
30 that may reasonably be expected to be available to the absent  
31 parent including, but not limited to, the following: wages and  
32 salary income; income from self employment; income from  
33 commissions; income from investments, including dividends,  
34 interest income and income on any trust account or property;  
35 absent parent's portion of any joint income of both parents;  
36 workers' compensation, disability, unemployment, annuity and  
37 retirement benefits, including an individual retirement account  
38 (IRA); any other payments made by any person, private entity,  
39 federal or state government or any unit of local government;  
40 alimony; any income earned from an interest in or from inherited  
41 property; any other form of earned income; and gross income shall  
42 exclude any monetary benefits derived from a second household,  
43 such as income of the absent parent's current spouse;

44           (b) Subtract the following legally mandated deductions:



45 (i) Federal, state and local taxes. Contributions  
46 to the payment of taxes over and beyond the actual liability for  
47 the taxable year shall not be considered a mandatory deduction;

48 (ii) Social security contributions;

49 (iii) Retirement and disability contributions  
50 except any voluntary retirement and disability contributions;

51 (c) If the absent parent is subject to an existing  
52 court order for another child or children, subtract the amount of  
53 that court-ordered support;

54 (d) If the absent parent is also the parent of another  
55 child or other children residing with him, then the court may  
56 subtract an amount that it deems appropriate to account for the  
57 needs of said child or children;

58 (e) Compute the total annual amount of adjusted gross  
59 income based on paragraphs (a) through (d), then divide this  
60 amount by twelve (12) to obtain the monthly amount of adjusted  
61 gross income.

62 Upon conclusion of the calculation of paragraphs (a) through  
63 (e), multiply the monthly amount of adjusted gross income by the  
64 appropriate percentage designated in subsection (1) to arrive at  
65 the amount of the monthly child support award.

66 (4) In cases in which the adjusted gross income as defined  
67 in this section is more than Fifty Thousand Dollars (\$50,000.00)  
68 or less than Five Thousand Dollars (\$5,000.00), the court shall  
69 make a written finding in the record as to whether or not the



70 application of the guidelines established in this section is  
71 reasonable.

72 (5) The Department of Human Services shall review the  
73 appropriateness of these guidelines beginning January 1, 1994, and  
74 every four (4) years thereafter and report its findings to the  
75 Legislature no later than the first day of the regular legislative  
76 session of that year. The Legislature shall thereafter amend  
77 these guidelines when it finds that amendment is necessary to  
78 ensure that equitable support is being awarded in all cases  
79 involving the support of minor children.

80 (6) All orders involving support of minor children, as a  
81 matter of law, shall include reasonable medical support. Notice  
82 to the obligated parent's employer that medical support has been  
83 ordered shall be on a form as prescribed by the Department of  
84 Human Services. In any case in which the support of any child is  
85 involved, the court shall make the following findings either on  
86 the record or in the judgment:

87 (a) The availability to all parties of health insurance  
88 coverage for the child(ren);

89 (b) The cost of health insurance coverage to all  
90 parties.

91 The court shall then make appropriate provisions in the  
92 judgment for the provision of health insurance coverage for the  
93 child(ren) in the manner that is in the best interests of the  
94 child(ren). If the court requires the custodial parent to obtain



95 the coverage then its cost shall be taken into account in  
96 establishing the child support award. If the court determines  
97 that health insurance coverage is not available to any party or  
98 that it is not available to either party at a cost that is  
99 reasonable as compared to the income of the parties, then the  
100 court shall make specific findings as to such either on the record  
101 or in the judgment. In that event, the court shall make  
102 appropriate provisions in the judgment for the payment of medical  
103 expenses of the child(ren) in the absence of health insurance  
104 coverage.

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

107       93-11-65. (1) (a) In addition to the right to proceed  
108 under Section 93-5-23, Mississippi Code of 1972, and in addition  
109 to the remedy of habeas corpus in proper cases, and other existing  
110 remedies, the chancery court of the proper county shall have  
111 jurisdiction to entertain suits for the custody, care, support and  
112 maintenance of minor children and to hear and determine all such  
113 matters, and shall, if need be, require bond, sureties or other  
114 guarantee to secure any order for periodic payments for the  
115 maintenance or support of a child. In the event a legally  
116 responsible parent has health insurance available to him or her  
117 through an employer or organization that may extend benefits to  
118 the dependents of such parent, any order of support issued against  
119 such parent may require him or her to exercise the option of



120 additional coverage in favor of such children as he or she is  
121 legally responsible to support. Proceedings may be brought by or  
122 against a resident or nonresident of the State of Mississippi,  
123 whether or not having the actual custody of minor children, for  
124 the purpose of judicially determining the legal custody of a  
125 child. All actions herein authorized may be brought in the county  
126 where the child is actually residing, or in the county of the  
127 residence of the party who has actual custody, or of the residence  
128 of the defendant. Process shall be had upon the parties as  
129 provided by law for process in person or by publication, if they  
130 be nonresidents of the state or residents of another jurisdiction  
131 or are not found therein after diligent search and inquiry or are  
132 unknown after diligent search and inquiry; provided that the court  
133 or chancellor in vacation may fix a date in termtime or in  
134 vacation to which process may be returnable and shall have power  
135 to proceed in termtime or vacation. Provided, however, that if  
136 the court shall find that both parties are fit and proper persons  
137 to have custody of the children, and that either party is able to  
138 adequately provide for the care and maintenance of the children,  
139 the chancellor may consider the preference of a child of twelve  
140 (12) years of age or older as to the parent with whom the child  
141 would prefer to live in determining what would be in the best  
142 interest and welfare of the child. The chancellor shall place on  
143 the record the reason or reasons for which the award of custody



144 was made and explain in detail why the wishes of any child were or  
145 were not honored.

146 (b) An order of child support shall specify the sum to  
147 be paid weekly or otherwise. In addition to providing for support  
148 and education, the order shall also provide for the support of the  
149 child prior to the making of the order for child support, and such  
150 other expenses as the court may deem proper.

151 (c) The court may require the payment to be made to the  
152 custodial parent, or to some person or corporation to be  
153 designated by the court as trustee, but if the child or custodial  
154 parent is receiving public assistance, the Department of Human  
155 Services shall be made the trustee.

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

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

164 (3) Whenever the court has ordered a party to make periodic  
165 payments for the maintenance or support of a child, but no bond,  
166 sureties or other guarantee has been required to secure such  
167 payments, and whenever such payments as have become due remain  
168 unpaid for a period of at least thirty (30) days, the court may,



169 upon petition of the person to whom such payments are owing, or  
170 such person's legal representative, enter an order requiring that  
171 bond, sureties or other security be given by the person obligated  
172 to make such payments, the amount and sufficiency of which shall  
173 be approved by the court. The obligor shall, as in other civil  
174 actions, be served with process and shall be entitled to a hearing  
175 in such case.

176 (4) When a charge of abuse or neglect of a child first  
177 arises in the course of a custody or maintenance action pending in  
178 the chancery court pursuant to this section, the chancery court  
179 may proceed with the investigation, hearing and determination of  
180 such abuse or neglect charge as a part of its hearing and  
181 determination of the custody or maintenance issue as between the  
182 parents, as provided in Section 43-21-151, notwithstanding the  
183 other provisions of the Youth Court Law. The proceedings in  
184 chancery court on the abuse or neglect charge shall be  
185 confidential in the same manner as provided in youth court  
186 proceedings, and the chancery court shall appoint a guardian ad  
187 litem in such cases, as provided under Section 43-21-121 for youth  
188 court proceedings, who shall be an attorney. In determining  
189 whether any portion of a guardian ad litem's fee shall be assessed  
190 against any party or parties as a cost of court for reimbursement  
191 to the county, the court shall consider each party's individual  
192 ability to pay. Unless the chancery court's jurisdiction has been  
193 terminated, all disposition orders in such cases for placement





194 with the Department of Human Services shall be reviewed by the  
195 court or designated authority at least annually to determine if  
196 continued placement with the department is in the best interest of  
197 the child or the public.

198 (5) Each party to a paternity or child support proceeding  
199 shall notify the other within five (5) days after any change of  
200 address. In addition, the noncustodial and custodial parent shall  
201 file and update, with the court and with the state case registry,  
202 information on that party's location and identity, including  
203 social security number, residential and mailing addresses,  
204 telephone numbers, photograph, driver's license number, and name,  
205 address and telephone number of the party's employer. This  
206 information shall be required upon entry of an order or within  
207 five (5) days of a change of address.

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

211 (7) In any subsequent child support enforcement action  
212 between the parties, upon sufficient showing that diligent effort  
213 has been made to ascertain the location of a party, due process  
214 requirements for notice and service of process shall be deemed to  
215 be met with respect to the party upon delivery of written notice  
216 to the most recent residential or employer address filed with the  
217 state case registry.



218           (8) (a) The duty of support of a child terminates upon the  
219 emancipation of the child. Unless otherwise provided for in the  
220 underlying child support judgment, for child support orders  
221 established before July 1, 2013, emancipation shall occur when the  
222 child:

223                           (i) Attains the age of twenty-one (21) years, or  
224                           (ii) Marries, or  
225                           (iii) Joins the military and serves on a full-time  
226 basis, or

227                           (iv) Is convicted of a felony and is sentenced to  
228 incarceration of two (2) or more years for committing such  
229 felony; \* \* \*

230           (b) Unless otherwise provided for in the underlying  
231 child support judgment established before July 1, 2013, the court  
232 may determine that emancipation has occurred and no other support  
233 obligation exists when the child:

234                           (i) Discontinues full-time enrollment in school  
235 having attained the age of eighteen (18) years, unless the child  
236 is disabled, or

237                           (ii) Voluntarily moves from the home of the  
238 custodial parent or guardian, establishes independent living  
239 arrangements, obtains full-time employment and discontinues  
240 educational endeavors prior to attaining the age of twenty-one  
241 (21) years, or



242 (iii) Cohabits with another person without the  
243 approval of the parent obligated to pay support \* \* \*.

244 (c) The duty of support of a child who is incarcerated  
245 but not emancipated shall be suspended for the period of the  
246 child's incarceration.

247 (9) (a) The duty of support of a child terminates upon the  
248 emancipation of the child. Unless otherwise provided for in the  
249 underlying child support judgment, for child support orders  
250 established on or after July 1, 2013, emancipation shall occur  
251 when the child:

252 (i) Attains the age of eighteen (18) years or  
253 graduates from high school, whichever comes later, but in no event  
254 shall the duty of support continue after the age of nineteen (19)  
255 unless otherwise agreed to in the support order, or

256 (ii) Marries, or

257 (iv) Joins the military and serves on a full-time  
258 basis, or

259 (b) Unless otherwise provided for in the underlying  
260 child support judgment established on or after July 1, 2013, the  
261 court may determine that emancipation has occurred and no other  
262 support obligation exists when the child:

263 (i) Discontinues full-time enrollment in school  
264 having attained the age of eighteen (18) years, unless the child  
265 is disabled, or

266 (ii) Cohabits with another person without the



267 approval of the parent obligated to pay support.

268 (c) The duty of support of a child who is incarcerated but  
269 not emancipated shall be suspended for the period of the child's  
270 incarceration.

271 ( \* \* \*10) A determination of emancipation does not  
272 terminate any obligation of the noncustodial parent to satisfy  
273 arrearage existing as of the date of emancipation; the total  
274 amount of periodic support due prior to the emancipation plus any  
275 periodic amounts ordered paid toward the arrearage shall continue  
276 to be owed until satisfaction of the arrearage in full, in  
277 addition to the right of the person for whom the obligation is  
278 owed to execute for collection as may be provided by law.

279 ( \* \* \*11) Upon motion of a party requesting temporary child  
280 support pending a determination of parentage, temporary support  
281 shall be ordered if there is clear and convincing evidence of  
282 paternity on the basis of genetic tests or other evidence, unless  
283 the court makes written findings of fact on the record that the  
284 award of temporary support would be unjust or inappropriate in a  
285 particular case.

286 ( \* \* \*12) Custody and visitation upon military temporary  
287 duty, deployment or mobilization shall be governed by Section  
288 93-5-34.

289 **SECTION 3.** This act shall take effect and be in force from  
290 and after July 1, 2013.

