

By: Representatives Cockerham, Anthony

To: Judiciary A

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 888

1 AN ACT TO AMEND SECTION 93-11-65, MISSISSIPPI CODE OF 1972,
2 TO AUTHORIZE CHILD SUPPORT FOR A CHILD WHO HAS A DISABILITY AND IS
3 PAST THE AGE OF MAJORITY; AND FOR RELATED PURPOSES.

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

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

7 93-11-65. (1) (a) In addition to the right to proceed
8 under Section 93-5-23, Mississippi Code of 1972, and in addition
9 to the remedy of habeas corpus in proper cases, and other existing
10 remedies, the chancery court of the proper county shall have
11 jurisdiction to entertain suits for the custody, care, support and
12 maintenance of minor children and to hear and determine all such
13 matters, and shall, if need be, require bond, sureties or other
14 guarantee to secure any order for periodic payments for the
15 maintenance or support of a child. * * * If a legally responsible
16 parent has health insurance available * * * through an employer or
17 organization that may extend benefits to the dependents of * * *
18 the parent, any order of support issued against * * * the parent



19 may require him or her to exercise the option of additional
20 coverage in favor of * * * any children as he or she is legally
21 responsible to support. Proceedings may be brought by or against
22 a resident or nonresident of the State of Mississippi, whether or
23 not having the actual custody of minor children, for the purpose
24 of judicially determining the legal custody of a child. All
25 actions herein authorized may be brought in the county where the
26 child is actually residing, or in the county of the residence of
27 the party who has actual custody, or of the residence of the
28 defendant. Process shall be had upon the parties as provided by
29 law for process in person or by publication, if they * * * are
30 nonresidents of the state or residents of another jurisdiction or
31 are not found therein after diligent search and inquiry or are
32 unknown after diligent search and inquiry; provided that the court
33 or chancellor in vacation may fix a date in termtime or in
34 vacation to which process may be returnable and shall have power
35 to proceed in termtime or vacation. * * * If the court shall find
36 that both parties are fit and proper persons to have custody of
37 the children, and that either party is able to adequately provide
38 for the care and maintenance of the children, the chancellor may
39 consider the preference of a child of twelve (12) years of age or
40 older as to the parent with whom the child would prefer to live in
41 determining what would be in the best interest and welfare of the
42 child. The chancellor shall place on the record the reason or



43 reasons for which the award of custody was made and explain in
44 detail why the wishes of any child were or were not honored.

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

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

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

59 (2) * * * Where the proof shows that both parents have
60 separate incomes or estates, the court may require that each
61 parent contribute to the support and maintenance of the children
62 in proportion to the relative financial ability of each.

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



68 upon petition of the person to whom such payments are owing, or
69 such person's legal representative, enter an order requiring that
70 bond, sureties or other security be given by the person obligated
71 to make such payments, the amount and sufficiency of which shall
72 be approved by the court. The obligor shall, as in other civil
73 actions, be served with process and shall be entitled to a hearing
74 in such case.

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



93 with the Department of Human Services shall be reviewed by the
94 court or designated authority at least annually to determine if
95 continued placement with the department is in the best interest of
96 the child or the public.

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

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

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



117 (8) (a) Except as otherwise provided in subsection (11) of
118 this section, the duty of support of a child terminates upon the
119 emancipation of the child. Unless otherwise provided for in the
120 underlying child support judgment, emancipation shall occur when
121 the child:

122 (i) Attains the age of twenty-one (21) years, or

123 (ii) Marries, or

124 (iii) Joins the military and serves on a full-time
125 basis, or

126 (iv) Is convicted of a felony and is sentenced to
127 incarceration of two (2) or more years for committing such
128 felony; * * *

129 (b) Unless otherwise provided for in the underlying
130 child support judgment, the court may determine that emancipation
131 has occurred and no other support obligation exists when the
132 child:

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

136 (ii) Voluntarily moves from the home of the
137 custodial parent or guardian, establishes independent living
138 arrangements, obtains full-time employment and discontinues
139 educational endeavors prior to attaining the age of twenty-one
140 (21) years, or



141 (iii) Cohabits with another person without the
142 approval of the parent obligated to pay support; * * *

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

146 (9) A determination of emancipation does not terminate any
147 obligation of the noncustodial parent to satisfy arrearage
148 existing as of the date of emancipation; the total amount of
149 periodic support due prior to the emancipation plus any periodic
150 amounts ordered paid toward the arrearage shall continue to be
151 owed until satisfaction of the arrearage in full, in addition to
152 the right of the person for whom the obligation is owed to execute
153 for collection as may be provided by law.

154 (10) Upon motion of a party requesting temporary child
155 support pending a determination of parentage, temporary support
156 shall be ordered if there is clear and convincing evidence of
157 paternity on the basis of genetic tests or other evidence, unless
158 the court makes written findings of fact on the record that the
159 award of temporary support would be unjust or inappropriate in a
160 particular case.

161 (11) (a) Support for an adult child who is incapable of
162 self-support by reason of a physical or mental disability, if the
163 disability existed during the adult child's minority shall be
164 presumed to continue past the child's anticipated age of majority;



165 (b) Under the authority provided in this subsection,
166 the court may:

167 (i) Order that the duty to support a child
168 continues past the anticipated age of majority if the minor child
169 has a disability which was present during the child's minority
170 that prevents the child from living independently unless the child
171 is a long-term patient in a facility owned or operated by the
172 State of Mississippi;

173 (ii) Order, modify or leave in place previous
174 orders regarding custody, visitation, payment of medical expenses
175 or any other matters regarding the health, maintenance, education
176 and welfare of the child with a disability; and

177 (iii) Consider the adult child's receipt of and
178 eligibility for public benefits and community services and
179 resources in determining the award of support;

180 (c) The presumption of continued support created by
181 this subsection (11) shall be rebuttable by the introduction of
182 evidence using a preponderance of the evidence standard to
183 determine whether the adult child is capable of self-support.

184 (* * *12) Custody and visitation upon military temporary
185 duty, deployment or mobilization shall be governed by Section
186 93-5-34.

187 **SECTION 2.** This act shall take effect and be in force from
188 and after its passage.

