

By: Representatives Rushing, Taylor

To: Judiciary A

HOUSE BILL NO. 1176

1 AN ACT TO AMEND SECTION 93-11-65, MISSISSIPPI CODE OF 1972,
2 TO REVISE THE RIGHT OF A TWELVE-YEAR-OLD CHILD TO SELECT THE
3 CUSTODIAL PARENT; 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. In the event a legally
16 responsible parent has health insurance available to him or her
17 through an employer or organization that may extend benefits to
18 the dependents of such parent, any order of support issued against
19 such parent may require him or her to exercise the option of
20 additional coverage in favor of such children as he or she is
21 legally responsible to support. Proceedings may be brought by or
22 against a resident or nonresident of the State of Mississippi,
23 whether or not having the actual custody of minor children, for
24 the purpose of judicially determining the legal custody of a
25 child. All actions herein authorized may be brought in the county
26 where the child is actually residing, or in the county of the
27 residence of the party who has actual custody, or of the residence

28 of the defendant. Process shall be had upon the parties as
29 provided by law for process in person or by publication, if they
30 be nonresidents of the state or residents of another jurisdiction
31 or 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. Provided, however, that if
36 the court shall find that both parties are fit and proper persons
37 to have custody of the children, and that either party is able to
38 adequately provide for the care and maintenance of the children,
39 and that it would be to the best interest and welfare of the
40 children, then any such child who shall have reached his twelfth
41 birthday may have the privilege of choosing the parent with whom
42 he shall live.

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

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

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

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

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

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

91 (5) Each party to a paternity or child support proceeding
92 shall notify the other within five (5) days after any change of
93 address. In addition, the noncustodial and custodial parent shall

94 file and update, with the court and with the state case registry,
95 information on that party's location and identity, including
96 social security number, residential and mailing addresses,
97 telephone numbers, photograph, driver's license number, and name,
98 address and telephone number of the party's employer. This
99 information shall be required upon entry of an order or within
100 five (5) days of a change of address.

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

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

111 (8) The duty of support of a child terminates upon the
112 emancipation of the child. The court may determine that
113 emancipation has occurred and no other support obligation exists
114 when the child:

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

116 (b) Marries, or

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

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

124 (9) Upon motion of a party requesting temporary child
125 support pending a determination of parentage, temporary support
126 shall be ordered if there is clear and convincing evidence of

127 paternity on the basis of genetic tests or other evidence, unless
128 the court makes written findings of fact on the record that the
129 award of temporary support would be unjust or inappropriate in a
130 particular case.

131 SECTION 2. This act shall take effect and be in force from
132 and after July 1, 2001.