

By: Senator(s) Huggins

To: Public Health and
Welfare; Judiciary

SENATE BILL NO. 2364

1 AN ACT TO AMEND SECTIONS 93-5-23 AND 93-11-65, MISSISSIPPI
2 CODE OF 1972, TO PROVIDE FOR THE AUTOMATIC EMANCIPATION OF A MINOR
3 WITHOUT FURTHER ORDER OF THE COURT AND THE RECOVERY OF ARREARS
4 BEYOND THE AGE OF EMANCIPATION IN CHILD SUPPORT ENFORCEMENT CASES;
5 AND FOR RELATED PURPOSES.

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

7 **SECTION 1.** Section 93-5-23, Mississippi Code of 1972, is
8 amended as follows:

9 93-5-23. (1) When a divorce shall be decreed from the bonds
10 of matrimony, the court may, in its discretion, having regard to
11 the circumstances of the parties and the nature of the case, as
12 may seem equitable and just, make all orders touching the care,
13 custody and maintenance of the children of the marriage, and also
14 touching the maintenance and alimony of the wife or the husband,
15 or any allowance to be made to her or him, and shall, if need be,
16 require bond, sureties or other guarantee for the payment of the
17 sum so allowed. Orders touching on the custody of the children of
18 the marriage shall be made in accordance with the provisions of
19 Section 93-5-24. The court may afterwards, on petition, change
20 the decree, and make from time to time such new decrees as the
21 case may require. However, where proof shows that both parents
22 have separate incomes or estates, the court may require that each
23 parent contribute to the support and maintenance of the children
24 of the marriage in proportion to the relative financial ability of
25 each. In the event a legally responsible parent has health
26 insurance available to him or her through an employer or
27 organization that may extend benefits to the dependents of such
28 parent, any order of support issued against such parent may



29 require him or her to exercise the option of additional coverage
30 in favor of such children as he or she is legally responsible to
31 support.

32 (2) Whenever the court has ordered a party to make periodic
33 payments for the maintenance or support of a child, but no bond,
34 sureties or other guarantee has been required to secure such
35 payments, and whenever such payments as have become due remain
36 unpaid for a period of at least thirty (30) days, the court may,
37 upon petition of the person to whom such payments are owing, or
38 such person's legal representative, enter an order requiring that
39 bond, sureties or other security be given by the person obligated
40 to make such payments, the amount and sufficiency of which shall
41 be approved by the court. The obligor shall, as in other civil
42 actions, be served with process and shall be entitled to a hearing
43 in such case.

44 (3) Whenever in any proceeding in the chancery court
45 concerning the custody of a child a party alleges that the child
46 whose custody is at issue has been the victim of sexual or
47 physical abuse by the other party, the court may, on its own
48 motion, grant a continuance in the custody proceeding only until
49 such allegation has been investigated by the Department of Human
50 Services. At the time of ordering such continuance the court may
51 direct the party, and his attorney, making such allegation of
52 child abuse to report in writing and provide all evidence touching
53 on the allegation of abuse to the Department of Human Services.
54 The Department of Human Services shall investigate such allegation
55 and take such action as it deems appropriate and as provided in
56 such cases under the Youth Court Law (being Chapter 21 of Title
57 43, Mississippi Code of 1972) or under the laws establishing
58 family courts (being Chapter 23 of Title 43, Mississippi Code of
59 1972).

60 (4) If after investigation by the Department of Human
61 Services or final disposition by the youth court or family court



62 allegations of child abuse are found to be without foundation, the
63 chancery court shall order the alleging party to pay all court
64 costs and reasonable attorney's fees incurred by the defending
65 party in responding to such allegation.

66 (5) The court may investigate, hear and make a determination
67 in a custody action when a charge of abuse and/or neglect arises
68 in the course of a custody action as provided in Section
69 43-21-151, and in such cases the court shall appoint a guardian ad
70 litem for the child as provided under Section 43-21-121, who shall
71 be an attorney. Unless the chancery court's jurisdiction has been
72 terminated, all disposition orders in such cases for placement
73 with the Department of Human Services shall be reviewed by the
74 court or designated authority at least annually to determine if
75 continued placement with the department is in the best interest of
76 the child or public.

77 (6) (a) The duty of support of a child terminates upon the
78 emancipation of the child. Emancipation shall be automatic
79 without further order of the court when the child attains the age
80 of twenty-one (21) years unless there is an order of the court to
81 the contrary.

82 (b) Emancipation shall be automatically effective
83 without further order of the court upon proof of one (1) of the
84 following occurrences being placed in the court file and a copy
85 sent to all interested parties:

86 (i) Marries (as evidenced by a marriage
87 certificate); or

88 (ii) Enlists in the military and enters active
89 duty with the U.S. Armed Forces or full-time employment with the
90 National Guard or Reserve (as evidenced by any official government
91 document); or

92 (iii) Is convicted as an adult of a felony and
93 sentenced to an adult correctional facility (as evidenced by a
94 sentencing order).



95 Such emancipation shall not be considered retroactive absent
96 a court order.

97 (c) However, the court may determine that emancipation
98 has occurred and no prospective support obligation exists when the
99 child:

100 (i) Discontinues full-time enrollment in school
101 and obtains full-time employment prior to attaining the age of
102 twenty-one (21) years; or

103 (ii) Voluntarily moves from the home of the
104 custodial parent or guardian and establishes independent living
105 arrangements and obtains full-time employment prior to attaining
106 the age of twenty-one (21) years.

107 Such a determination shall not be made retroactive prior to
108 the date of the filing.

109 (d) In child support orders where the current child
110 support obligation has terminated and there exists an arrearage
111 for unpaid child support, then the amount that is currently
112 ordered to be paid (current and arrearage obligation) shall
113 continue, until further order of the court, to be paid by the
114 obligor or withheld by the obligor's employer. Said payments
115 shall be applied to the child support arrearage until paid in full
116 without further order of the court.

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

119 93-11-65. (1) (a) In addition to the right to proceed
120 under Section 93-5-23, Mississippi Code of 1972, and in addition
121 to the remedy of habeas corpus in proper cases, and other existing
122 remedies, the chancery court of the proper county shall have
123 jurisdiction to entertain suits for the custody, care, support and
124 maintenance of minor children and to hear and determine all such
125 matters, and shall, if need be, require bond, sureties or other
126 guarantee to secure any order for periodic payments for the
127 maintenance or support of a child. In the event a legally



128 responsible parent has health insurance available to him or her
129 through an employer or organization that may extend benefits to
130 the dependents of such parent, any order of support issued against
131 such parent may require him or her to exercise the option of
132 additional coverage in favor of such children as he or she is
133 legally responsible to support. Proceedings may be brought by or
134 against a resident or nonresident of the State of Mississippi,
135 whether or not having the actual custody of minor children, for
136 the purpose of judicially determining the legal custody of a
137 child. All actions herein authorized may be brought in the county
138 where the child is actually residing, or in the county of the
139 residence of the party who has actual custody, or of the residence
140 of the defendant. Process shall be had upon the parties as
141 provided by law for process in person or by publication, if they
142 be nonresidents of the state or residents of another jurisdiction
143 or are not found therein after diligent search and inquiry or are
144 unknown after diligent search and inquiry; provided that the court
145 or chancellor in vacation may fix a date in termtime or in
146 vacation to which process may be returnable and shall have power
147 to proceed in termtime or vacation. Provided, however, that if
148 the court shall find that both parties are fit and proper persons
149 to have custody of the children, and that either party is able to
150 adequately provide for the care and maintenance of the children,
151 and that it would be to the best interest and welfare of the
152 children, then any such child who shall have reached his twelfth
153 birthday shall have the privilege of choosing the parent with whom
154 he shall live.

155 (b) An order of child support shall specify the sum to
156 be paid weekly or otherwise. In addition to providing for support
157 and education, the order shall also provide for the support of the
158 child prior to the making of the order for child support, and such
159 other expenses as the court may deem proper.



160 (c) The court may require the payment to be made to the
161 custodial parent, or to some person or corporation to be
162 designated by the court as trustee, but if the child or custodial
163 parent is receiving public assistance, the Department of Human
164 Services shall be made the trustee.

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

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

173 (3) Whenever the court has ordered a party to make periodic
174 payments for the maintenance or support of a child, but no bond,
175 sureties or other guarantee has been required to secure such
176 payments, and whenever such payments as have become due remain
177 unpaid for a period of at least thirty (30) days, the court may,
178 upon petition of the person to whom such payments are owing, or
179 such person's legal representative, enter an order requiring that
180 bond, sureties or other security be given by the person obligated
181 to make such payments, the amount and sufficiency of which shall
182 be approved by the court. The obligor shall, as in other civil
183 actions, be served with process and shall be entitled to a hearing
184 in such case.

185 (4) When a charge of abuse or neglect of a child first
186 arises in the course of a custody or maintenance action pending in
187 the chancery court pursuant to this section, the chancery court
188 may proceed with the investigation, hearing and determination of
189 such abuse or neglect charge as a part of its hearing and
190 determination of the custody or maintenance issue as between the
191 parents, as provided in Section 43-21-151, notwithstanding the
192 other provisions of the Youth Court Law. The proceedings in



193 chancery court on the abuse or neglect charge shall be
194 confidential in the same manner as provided in youth court
195 proceedings, and the chancery court shall appoint a guardian ad
196 litem in such cases, as provided under Section 43-21-121 for youth
197 court proceedings, who shall be an attorney. Unless the chancery
198 court's jurisdiction has been terminated, all disposition orders
199 in such cases for placement with the Department of Human Services
200 shall be reviewed by the court or designated authority at least
201 annually to determine if continued placement with the department
202 is in the best interest of the child or the public.

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

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

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

223 (8) (a) The duty of support of a child terminates upon the
224 emancipation of the child. Emancipation shall be automatic
225 without further order of the court when the child attains the age



226 of twenty-one (21) years unless there is an order of the court to
227 the contrary.

228 (b) Emancipation shall be automatically effective
229 without further order of the court upon proof of one (1) of the
230 following occurrences being placed in the court file and a copy
231 sent to all interested parties:

232 (i) Marries (as evidenced by a marriage
233 certificate); or

234 (ii) Enlists in the military and enters active
235 duty with the U.S. Armed Forces or full-time employment with the
236 National Guard or Reserve (as evidenced by any official government
237 document); or

238 (iii) Is convicted as an adult of a felony and
239 sentenced to an adult correctional facility (as evidenced by a
240 sentencing order).

241 Such emancipation shall not be considered retroactive absent
242 a court order.

243 (c) However, the court may determine that emancipation
244 has occurred and no prospective support obligation exists when the
245 child:

246 (i) Discontinues full-time enrollment in school
247 and obtains full-time employment prior to attaining the age of
248 twenty-one (21) years; or

249 (ii) Voluntarily moves from the home of the
250 custodial parent or guardian and establishes independent living
251 arrangements and obtains full-time employment prior to attaining
252 the age of twenty-one (21) years.

253 Such a determination shall not be made retroactive prior to
254 the date of the filing.

255 (d) In child support orders where the current child
256 support obligation has terminated and there exists an arrearage
257 for unpaid child support, then the amount that is currently
258 ordered to be paid (current and arrearage obligation) shall



259 continue, until further order of the court, to be paid by the
260 obligor or withheld by the obligor's employer. Said payments
261 shall be applied to the child support arrearage until paid in full
262 without further order of the court.

263 (9) Upon motion of a party requesting temporary child
264 support pending a determination of parentage, temporary support
265 shall be ordered if there is clear and convincing evidence of
266 paternity on the basis of genetic tests or other evidence, unless
267 the court makes written findings of fact on the record that the
268 award of temporary support would be unjust or inappropriate in a
269 particular case.

270 **SECTION 3.** This act shall take effect and be in force from
271 and after July 1, 2003.

