

By: Senator(s) Butler

To: Judiciary, Division A

SENATE BILL NO. 2314

1 AN ACT TO AMEND SECTION 93-5-23, MISSISSIPPI CODE OF 1972, TO  
2 PROVIDE THAT THE CUSTODIAL PARENT OF A CHILD WILL BE RESPONSIBLE  
3 FOR THE HEALTH CARE EXPENSES OF THE CHILD WHEN THE COURT ORDER  
4 AWARDING CUSTODY AND ANY ORDER OF SUPPORT DO NOT SPECIFICALLY  
5 ASSIGN THAT RESPONSIBILITY; 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. When a divorce shall be decreed from the bonds of  
10 matrimony, the court may, in its discretion, having regard to the  
11 circumstances of the parties and the nature of the case, as may  
12 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. In the event neither the order of support nor custody  
32 order assign responsibility for payment of health care expenses  
33 for the child or children, the custodial parent shall be  
34 responsible for health care expenses for the child or children.

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

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

62 If after investigation by the Department of Human Services or  
63 final disposition by the youth court or family court allegations  
64 of child abuse are found to be without foundation, the chancery  
65 court shall order the alleging party to pay all court costs and  
66 reasonable attorney's fees incurred by the defending party in  
67 responding to such allegation.

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

79 The duty of support of a child terminates upon the  
80 emancipation of the child. The court may determine that  
81 emancipation has occurred and no other support obligation exists  
82 when the child:

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

84 (b) Marries, or

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

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

92 **SECTION 2.** This act shall take effect and be in force from  
93 and after July 1, 2005.