

By: Senator(s) Nunnelee

To: Judiciary, Division A

SENATE BILL NO. 2493

1 AN ACT TO AMEND SECTIONS 93-5-23 AND 93-11-65, MISSISSIPPI
2 CODE OF 1972, TO REVISE THE DEFINITION OF EMANCIPATION OF A MINOR
3 AS REGARDS CHILD SUPPORT; AND FOR RELATED PURPOSES.

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

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

7 93-5-23. When a divorce shall be decreed from the bonds of
8 matrimony, the court may, in its discretion, having regard to the
9 circumstances of the parties and the nature of the case, as may
10 seem equitable and just, make all orders touching the care,
11 custody and maintenance of the children of the marriage, and also
12 touching the maintenance and alimony of the wife or the husband,
13 or any allowance to be made to her or him, and shall, if need be,
14 require bond, sureties or other guarantee for the payment of the
15 sum so allowed. Orders touching on the custody of the children of
16 the marriage shall be made in accordance with the provisions of
17 Section 93-5-24. The court may afterwards, on petition, change
18 the decree, and make from time to time such new decrees as the
19 case may require. However, where proof shows that both parents
20 have separate incomes or estates, the court may require that each
21 parent contribute to the support and maintenance of the children
22 of the marriage in proportion to the relative financial ability of
23 each. In the event a legally responsible parent has health
24 insurance available to him or her through an employer or
25 organization that may extend benefits to the dependents of such
26 parent, any order of support issued against such parent may
27 require him or her to exercise the option of additional coverage

28 in favor of such children as he or she is legally responsible to
29 support.

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

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

57 If after investigation by the Department of Human Services or
58 final disposition by the youth court or family court allegations
59 of child abuse are found to be without foundation, the chancery
60 court shall order the alleging party to pay all court costs and

61 reasonable attorney's fees incurred by the defending party in
62 responding to such allegation.

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

74 The duty of support of a child terminates upon the
75 emancipation of the child. The court may determine that
76 emancipation has occurred pursuant to Section 93-11-65.

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

79 93-11-65. (1) (a) In addition to the right to proceed
80 under Section 93-5-23, Mississippi Code of 1972, and in addition
81 to the remedy of habeas corpus in proper cases, and other existing
82 remedies, the chancery court of the proper county shall have
83 jurisdiction to entertain suits for the custody, care, support and
84 maintenance of minor children and to hear and determine all such
85 matters, and shall, if need be, require bond, sureties or other
86 guarantee to secure any order for periodic payments for the
87 maintenance or support of a child. In the event a legally
88 responsible parent has health insurance available to him or her
89 through an employer or organization that may extend benefits to
90 the dependents of such parent, any order of support issued against
91 such parent may require him or her to exercise the option of
92 additional coverage in favor of such children as he or she is
93 legally responsible to support. Proceedings may be brought by or

94 against a resident or nonresident of the State of Mississippi,
95 whether or not having the actual custody of minor children, for
96 the purpose of judicially determining the legal custody of a
97 child. All actions herein authorized may be brought in the county
98 where the child is actually residing, or in the county of the
99 residence of the party who has actual custody, or of the residence
100 of the defendant. Process shall be had upon the parties as
101 provided by law for process in person or by publication, if they
102 be nonresidents of the state or residents of another jurisdiction
103 or are not found therein after diligent search and inquiry or are
104 unknown after diligent search and inquiry; provided that the court
105 or chancellor in vacation may fix a date in termtime or in
106 vacation to which process may be returnable and shall have power
107 to proceed in termtime or vacation. Provided, however, that if
108 the court shall find that both parties are fit and proper persons
109 to have custody of the children, and that either party is able to
110 adequately provide for the care and maintenance of the children,
111 and that it would be to the best interest and welfare of the
112 children, then any such child who shall have reached his twelfth
113 birthday shall have the privilege of choosing the parent with whom
114 he shall live.

115 (b) An order of child support shall specify the sum to
116 be paid weekly or otherwise. In addition to providing for support
117 and education, the order shall also provide for the support of the
118 child prior to the making of the order for child support, and such
119 other expenses as the court may deem proper.

120 (c) The court may require the payment to be made to the
121 custodial parent, or to some person or corporation to be
122 designated by the court as trustee, but if the child or custodial
123 parent is receiving public assistance, the Department of Human
124 Services shall be made the trustee.

125 (d) The noncustodial parent's liabilities for past
126 education and necessary support and maintenance and other expenses

127 are limited to a period of one (1) year next preceding the
128 commencement of an action.

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

133 (3) Whenever the court has ordered a party to make periodic
134 payments for the maintenance or support of a child, but no bond,
135 sureties or other guarantee has been required to secure such
136 payments, and whenever such payments as have become due remain
137 unpaid for a period of at least thirty (30) days, the court may,
138 upon petition of the person to whom such payments are owing, or
139 such person's legal representative, enter an order requiring that
140 bond, sureties or other security be given by the person obligated
141 to make such payments, the amount and sufficiency of which shall
142 be approved by the court. The obligor shall, as in other civil
143 actions, be served with process and shall be entitled to a hearing
144 in such case.

145 (4) When a charge of abuse or neglect of a child first
146 arises in the course of a custody or maintenance action pending in
147 the chancery court pursuant to this section, the chancery court
148 may proceed with the investigation, hearing and determination of
149 such abuse or neglect charge as a part of its hearing and
150 determination of the custody or maintenance issue as between the
151 parents, as provided in Section 43-21-151, notwithstanding the
152 other provisions of the Youth Court Law. The proceedings in
153 chancery court on the abuse or neglect charge shall be
154 confidential in the same manner as provided in youth court
155 proceedings, and the chancery court shall appoint a guardian ad
156 litem in such cases, as provided under Section 43-21-121 for youth
157 court proceedings, who shall be an attorney. Unless the chancery
158 court's jurisdiction has been terminated, all disposition orders
159 in such cases for placement with the Department of Human Services

160 shall be reviewed by the court or designated authority at least
161 annually to determine if continued placement with the department
162 is in the best interest of the child or the public.

163 (5) Each party to a paternity or child support proceeding
164 shall notify the other within five (5) days after any change of
165 address. In addition, the noncustodial and custodial parent shall
166 file and update, with the court and with the state case registry,
167 information on that party's location and identity, including
168 social security number, residential and mailing addresses,
169 telephone numbers, photograph, driver's license number, and name,
170 address and telephone number of the party's employer. This
171 information shall be required upon entry of an order or within
172 five (5) days of a change of address.

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

176 (7) In any subsequent child support enforcement action
177 between the parties, upon sufficient showing that diligent effort
178 has been made to ascertain the location of a party, due process
179 requirements for notice and service of process shall be deemed to
180 be met with respect to the party upon delivery of written notice
181 to the most recent residential or employer address filed with the
182 state case registry.

183 (8) The duty of support of a child terminates upon the
184 emancipation of the child. The court may determine that
185 emancipation has occurred and no other support obligation exists
186 when the child:

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

188 (b) Marries, or

189 (c) Discontinues full-time enrollment in school * * *

190 having attained the age of eighteen (18) years, unless the child
191 is disabled, or

192 (d) Voluntarily moves from the home of the custodial
193 parent or guardian, establishes independent living arrangements,
194 and obtains full-time employment prior to attaining the age of
195 twenty-one (21) years, or

196 (e) Joins the military, or

197 (f) Is convicted of a felony, or

198 (g) Is incarcerated for committing a felony, or

199 (h) Cohabits as if married.

200 (9) A determination of emancipation does not terminate any
201 obligation of the noncustodial parent to satisfy arrearage
202 existing as of the date of emancipation; the total amount of
203 periodic support due prior to the emancipation plus any periodic
204 amounts ordered paid toward the arrearage shall continue to be
205 owed until satisfaction of the arrearage in full.

206 (10) Upon motion of a party requesting temporary child
207 support pending a determination of parentage, temporary support
208 shall be ordered if there is clear and convincing evidence of
209 paternity on the basis of genetic tests or other evidence, unless
210 the court makes written findings of fact on the record that the
211 award of temporary support would be unjust or inappropriate in a
212 particular case.

213 **SECTION 3.** This act shall take effect and be in force from
214 and after July 1, 2005.