

By: Senator(s) Fillingane, McDaniel

To: Judiciary, Division A

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 2753

1 AN ACT TO CREATE SECTION 93-5-34, MISSISSIPPI CODE OF 1972,
2 TO PROVIDE FOR CHILD CUSTODY AND VISITATION UPON TEMPORARY DUTY,
3 DEPLOYMENT OR MOBILIZATION; TO AMEND SECTIONS 93-5-23 AND
4 93-11-65, MISSISSIPPI CODE OF 1972, IN CONFORMITY; AND FOR RELATED
5 PURPOSES.

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

7 **SECTION 1.** The following shall be codified as Section
8 93-5-34, Mississippi Code of 1972:

9 93-5-34. (1) It is the purpose of this section to provide a
10 means by which to facilitate a fair, efficient and swift process
11 to resolve matters regarding custody and visitation when a parent
12 receives temporary duty, deployment or mobilization orders from
13 the military.

14 (2) As used in this section:

15 (a) The term "deployment" means the temporary transfer
16 of a service member serving in an active-duty status to another
17 location in support of combat or some other military operation.

18 (b) The term "mobilization" means the call-up of a
19 National Guard or Reserve service member to extended active duty
20 status. For purposes of this definition, "mobilization" does not
21 include National Guard or Reserve annual training.

22 (c) The term "temporary duty" means the transfer of a
23 service member from one military base to a different location,
24 usually another base, for a limited period of time to accomplish
25 training or to assist in the performance of a noncombat mission.

26 (3) When a parent who has custody, or has joint custody with
27 primary physical custody, receives temporary duty, deployment or
28 mobilization orders from the military that involve moving a



29 substantial distance from the parent's residence having a material
30 effect on the parent's ability to exercise custody
31 responsibilities:

32 (a) Any temporary custody order for the child during
33 the parent's absence shall end no later than ten (10) days after
34 the parent returns, but shall not impair the discretion of the
35 court to conduct a hearing for emergency custody upon return of
36 the parent and within ten (10) days of the filing of a verified
37 motion for emergency custody alleging an immediate danger of
38 irreparable harm to the child; and

39 (b) The temporary duty, mobilization or deployment of
40 the service member and the temporary disruption to the child's
41 schedule shall not be factors in a determination of change of
42 circumstances if a motion is filed to transfer custody from the
43 service member.

44 (4) If the parent with visitation rights receives military
45 temporary duty, deployment or mobilization orders that involve
46 moving a substantial distance from the parent's residence or
47 otherwise have a material effect on the parent's ability to
48 exercise rights, the court otherwise may delegate the parent's
49 visitation rights, or a portion thereof, to a family member with a
50 close and substantial relationship to the service member's minor
51 child for the duration of the parent's absence, if delegating
52 visitation rights is in the child's best interest.

53 (5) Upon motion of a parent who has received military
54 temporary duty, deployment or mobilization orders, the court
55 shall, for a good cause shown, hold an expedited hearing in
56 custody and visitation matters instituted under this section when
57 the military duties of the parent have a material effect on the
58 parent's ability, or anticipated ability, to appear in person at a
59 regularly scheduled hearing.

60 (6) Upon motion of a parent who has received military
61 temporary duty, deployment or mobilization orders, the court



62 shall, upon reasonable advance notice and for good cause shown,
63 allow the parent to present testimony and evidence by affidavit or
64 electronic means in custody and visitation matters instituted
65 under this section when the military duties of the parent have a
66 material effect on the parent's ability to appear in person at a
67 regularly scheduled teleconference, or the Internet.

68 (7) Nothing in this section shall alter the duty of the
69 court to consider the best interest of the child in deciding
70 custody or visitation matters.

71 (8) Any hearing pursuant to this section shall take
72 precedence over all other causes not involving the public
73 interest, to the end that these cases may be expedited.

74 **SECTION 2.** Section 93-5-23, Mississippi Code of 1972, is
75 amended as follows:

76 93-5-23. When a divorce shall be decreed from the bonds of
77 matrimony, the court may, in its discretion, having regard to the
78 circumstances of the parties and the nature of the case, as may
79 seem equitable and just, make all orders touching the care,
80 custody and maintenance of the children of the marriage, and also
81 touching the maintenance and alimony of the wife or the husband,
82 or any allowance to be made to her or him, and shall, if need be,
83 require bond, sureties or other guarantee for the payment of the
84 sum so allowed. Orders touching on the custody of the children of
85 the marriage shall be made in accordance with the provisions of
86 Section 93-5-24. The court may afterwards, on petition, change
87 the decree, and make from time to time such new decrees as the
88 case may require. However, where proof shows that both parents
89 have separate incomes or estates, the court may require that each
90 parent contribute to the support and maintenance of the children
91 of the marriage in proportion to the relative financial ability of
92 each. In the event a legally responsible parent has health
93 insurance available to him or her through an employer or
94 organization that may extend benefits to the dependents of such



95 parent, any order of support issued against such parent may
96 require him or her to exercise the option of additional coverage
97 in favor of such children as he or she is legally responsible to
98 support.

99 Whenever the court has ordered a party to make periodic
100 payments for the maintenance or support of a child, but no bond,
101 sureties or other guarantee has been required to secure such
102 payments, and whenever such payments as have become due remain
103 unpaid for a period of at least thirty (30) days, the court may,
104 upon petition of the person to whom such payments are owing, or
105 such person's legal representative, enter an order requiring that
106 bond, sureties or other security be given by the person obligated
107 to make such payments, the amount and sufficiency of which shall
108 be approved by the court. The obligor shall, as in other civil
109 actions, be served with process and shall be entitled to a hearing
110 in such case.

111 Whenever in any proceeding in the chancery court concerning
112 the custody of a child a party alleges that the child whose
113 custody is at issue has been the victim of sexual or physical
114 abuse by the other party, the court may, on its own motion, grant
115 a continuance in the custody proceeding only until such allegation
116 has been investigated by the Department of Human Services. At the
117 time of ordering such continuance, the court may direct the party
118 and his attorney making such allegation of child abuse to report
119 in writing and provide all evidence touching on the allegation of
120 abuse to the Department of Human Services. The Department of
121 Human Services shall investigate such allegation and take such
122 action as it deems appropriate and as provided in such cases under
123 the Youth Court Law (being Chapter 21 of Title 43, Mississippi
124 Code of 1972) or under the laws establishing family courts (being
125 Chapter 23 of Title 43, Mississippi Code of 1972).

126 If after investigation by the Department of Human Services or
127 final disposition by the youth court or family court allegations



128 of child abuse are found to be without foundation, the chancery
129 court shall order the alleging party to pay all court costs and
130 reasonable attorney's fees incurred by the defending party in
131 responding to such allegation.

132 The court may investigate, hear and make a determination in a
133 custody action when a charge of abuse and/or neglect arises in the
134 course of a custody action as provided in Section 43-21-151, and
135 in such cases the court shall appoint a guardian ad litem for the
136 child as provided under Section 43-21-121, who shall be an
137 attorney. Unless the chancery court's jurisdiction has been
138 terminated, all disposition orders in such cases for placement
139 with the Department of Human Services shall be reviewed by the
140 court or designated authority at least annually to determine if
141 continued placement with the department is in the best interest of
142 the child or public.

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

146 Custody and visitation upon military temporary duty,
147 deployment or mobilization shall be governed by Section 93-5-34.

148 **SECTION 3.** Section 93-11-65, Mississippi Code of 1972, is
149 amended as follows:

150 93-11-65. (1) (a) In addition to the right to proceed
151 under Section 93-5-23, Mississippi Code of 1972, and in addition
152 to the remedy of habeas corpus in proper cases, and other existing
153 remedies, the chancery court of the proper county shall have
154 jurisdiction to entertain suits for the custody, care, support and
155 maintenance of minor children and to hear and determine all such
156 matters, and shall, if need be, require bond, sureties or other
157 guarantee to secure any order for periodic payments for the
158 maintenance or support of a child. In the event a legally
159 responsible parent has health insurance available to him or her
160 through an employer or organization that may extend benefits to



161 the dependents of such parent, any order of support issued against
162 such parent may require him or her to exercise the option of
163 additional coverage in favor of such children as he or she is
164 legally responsible to support. Proceedings may be brought by or
165 against a resident or nonresident of the State of Mississippi,
166 whether or not having the actual custody of minor children, for
167 the purpose of judicially determining the legal custody of a
168 child. All actions herein authorized may be brought in the county
169 where the child is actually residing, or in the county of the
170 residence of the party who has actual custody, or of the residence
171 of the defendant. Process shall be had upon the parties as
172 provided by law for process in person or by publication, if they
173 be nonresidents of the state or residents of another jurisdiction
174 or are not found therein after diligent search and inquiry or are
175 unknown after diligent search and inquiry; provided that the court
176 or chancellor in vacation may fix a date in termtime or in
177 vacation to which process may be returnable and shall have power
178 to proceed in termtime or vacation. Provided, however, that if
179 the court shall find that both parties are fit and proper persons
180 to have custody of the children, and that either party is able to
181 adequately provide for the care and maintenance of the children,
182 the chancellor may consider the preference of a child of twelve
183 (12) years of age or older as to the parent with whom the child
184 would prefer to live in determining what would be in the best
185 interest and welfare of the child. The chancellor shall place on
186 the record the reason or reasons for which the award of custody
187 was made and explain in detail why the wishes of any child were or
188 were not honored.

189 (b) An order of child support shall specify the sum to
190 be paid weekly or otherwise. In addition to providing for support
191 and education, the order shall also provide for the support of the
192 child prior to the making of the order for child support, and such
193 other expenses as the court may deem proper.



194 (c) The court may require the payment to be made to the
195 custodial parent, or to some person or corporation to be
196 designated by the court as trustee, but if the child or custodial
197 parent is receiving public assistance, the Department of Human
198 Services shall be made the trustee.

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

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

207 (3) Whenever the court has ordered a party to make periodic
208 payments for the maintenance or support of a child, but no bond,
209 sureties or other guarantee has been required to secure such
210 payments, and whenever such payments as have become due remain
211 unpaid for a period of at least thirty (30) days, the court may,
212 upon petition of the person to whom such payments are owing, or
213 such person's legal representative, enter an order requiring that
214 bond, sureties or other security be given by the person obligated
215 to make such payments, the amount and sufficiency of which shall
216 be approved by the court. The obligor shall, as in other civil
217 actions, be served with process and shall be entitled to a hearing
218 in such case.

219 (4) When a charge of abuse or neglect of a child first
220 arises in the course of a custody or maintenance action pending in
221 the chancery court pursuant to this section, the chancery court
222 may proceed with the investigation, hearing and determination of
223 such abuse or neglect charge as a part of its hearing and
224 determination of the custody or maintenance issue as between the
225 parents, as provided in Section 43-21-151, notwithstanding the
226 other provisions of the Youth Court Law. The proceedings in



227 chancery court on the abuse or neglect charge shall be
228 confidential in the same manner as provided in youth court
229 proceedings, and the chancery court shall appoint a guardian ad
230 litem in such cases, as provided under Section 43-21-121 for youth
231 court proceedings, who shall be an attorney. In determining
232 whether any portion of a guardian ad litem's fee shall be assessed
233 against any party or parties as a cost of court for reimbursement
234 to the county, the court shall consider each party's individual
235 ability to pay. Unless the chancery court's jurisdiction has been
236 terminated, all disposition orders in such cases for placement
237 with the Department of Human Services shall be reviewed by the
238 court or designated authority at least annually to determine if
239 continued placement with the department is in the best interest of
240 the child or the public.

241 (5) Each party to a paternity or child support proceeding
242 shall notify the other within five (5) days after any change of
243 address. In addition, the noncustodial and custodial parent shall
244 file and update, with the court and with the state case registry,
245 information on that party's location and identity, including
246 social security number, residential and mailing addresses,
247 telephone numbers, photograph, driver's license number, and name,
248 address and telephone number of the party's employer. This
249 information shall be required upon entry of an order or within
250 five (5) days of a change of address.

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

254 (7) In any subsequent child support enforcement action
255 between the parties, upon sufficient showing that diligent effort
256 has been made to ascertain the location of a party, due process
257 requirements for notice and service of process shall be deemed to
258 be met with respect to the party upon delivery of written notice



259 to the most recent residential or employer address filed with the
260 state case registry.

261 (8) The duty of support of a child terminates upon the
262 emancipation of the child. The court may determine that
263 emancipation has occurred and no other support obligation exists
264 when the child:

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

266 (b) Marries, or

267 (c) Discontinues full-time enrollment in school having
268 attained the age of eighteen (18) years, unless the child is
269 disabled, or

270 (d) Voluntarily moves from the home of the custodial
271 parent or guardian, establishes independent living arrangements,
272 obtains full-time employment and discontinues educational
273 endeavors prior to attaining the age of twenty-one (21) years, or

274 (e) Joins the military and serves on a full-time basis,
275 or

276 (f) Is convicted of a felony and is incarcerated for
277 committing such felony, or

278 (g) Cohabits with another person without the approval
279 of the parent obligated to pay support.

280 (9) A determination of emancipation does not terminate any
281 obligation of the noncustodial parent to satisfy arrearage
282 existing as of the date of emancipation; the total amount of
283 periodic support due prior to the emancipation plus any periodic
284 amounts ordered paid toward the arrearage shall continue to be
285 owed until satisfaction of the arrearage in full, in addition to
286 the right of the person for whom the obligation is owed to execute
287 for collection as may be provided by law.

288 (10) Upon motion of a party requesting temporary child
289 support pending a determination of parentage, temporary support
290 shall be ordered if there is clear and convincing evidence of
291 paternity on the basis of genetic tests or other evidence, unless



292 the court makes written findings of fact on the record that the
293 award of temporary support would be unjust or inappropriate in a
294 particular case.

295 (11) Custody and visitation upon military temporary duty,
296 deployment or mobilization shall be governed by Section 93-5-34.

297 **SECTION 4.** This act shall take effect and be in force from
298 and after July 1, 2008.

