

By: Representative Scott (80th)

To: Judiciary A

## HOUSE BILL NO. 206

1 AN ACT TO CODIFY SECTION 93-5-22, MISSISSIPPI CODE OF 1972,  
2 TO REQUIRE EQUITABLE DISTRIBUTION OF ASSETS ACQUIRED OR  
3 ACCUMULATED, AND DISTRIBUTION OF LIABILITIES INCURRED, DURING THE  
4 COURSE OF A MARRIAGE; TO PROVIDE EXCEPTIONS; TO CREATE A  
5 PRESUMPTION OF EQUAL DISTRIBUTION; TO PROVIDE FOR UNEQUAL  
6 DISTRIBUTION WHEN CERTAIN RELEVANT FACTORS EXIST; TO ENACT  
7 DEFINITIONS OF MARITAL AND NONMARITAL ASSETS AND LIABILITIES; TO  
8 MAKE CERTAIN PROVISIONS CONCERNING LUMP SUM ALIMONY; TO PROVIDE  
9 THAT THE COURT'S ORDER OF DISTRIBUTION OF ASSETS SHALL HAVE THE  
10 EFFECT OF A CONVEYANCE; TO PROTECT THE RIGHTS OF THIRD PARTIES;  
11 AND FOR RELATED PURPOSES. BE IT ENACTED BY THE LEGISLATURE OF  
12 THE STATE OF MISSISSIPPI:

13  
14 SECTION 1. The following provision shall be codified as  
15 Section 93-5-22, Mississippi Code of 1972:

16 93-5-22. (1) As used in this section:

17 (a) "Marital assets and liabilities" are those assets  
18 and liabilities which are not nonmarital and include:

19 (i) Assets acquired and liabilities incurred  
20 during the marriage, individually by either spouse or jointly by  
21 them;

22 (ii) The enhancement in value and appreciation of  
23 nonmarital assets resulting either from the efforts of either  
24 party during the marriage or from the contribution to or  
25 expenditure thereon of marital funds or other forms of marital  
26 assets, or both;

27 (iii) Interspousal gifts during the marriage; and

28 (iv) All vested benefits, rights and funds accrued  
29 during the marriage in retirement, pension, profit-sharing,  
30 annuity, deferred compensation and insurance plans and programs.

31 (b) "Nonmarital assets and liabilities" include:

32                   (i) Assets acquired and liabilities incurred by  
33 either party prior to the marriage, and assets acquired and  
34 liabilities incurred in exchange for such assets and liabilities;

35                   (ii) Assets acquired separately by either party by  
36 noninterspousal gift, bequest, devise or descent, and assets  
37 acquired in exchange for such assets;

38                   (iii) The enhancement in value and appreciation of  
39 nonmarital assets which is not brought about by the efforts of  
40 either party during the term of the marriage;

41                   (iv) All income derived from nonmarital assets  
42 during the marriage, except to the extent that the income was  
43 treated, used or relied upon by the parties as a marital asset;

44                   (v) Any real property held by the parties in joint  
45 tenancy, co-tenancy or tenancy by the entirety acquired prior to  
46 the marriage shall be presumed to be a nonmarital asset; and

47                   (vi) Assets and liabilities excluded from marital  
48 assets and liabilities by written agreement of the parties, and  
49 assets acquired and liabilities incurred in exchange for such  
50 assets and liabilities.

51           (2) In a proceeding for divorce from the bonds of matrimony,  
52 in addition to all other remedies available to a court to do  
53 equity between the parties, the court shall set apart to each  
54 spouse that spouse's nonmarital assets and liabilities, and in  
55 distributing the marital assets and liabilities between the  
56 parties, the court shall begin with the presumption that the  
57 distribution should be equal, unless there is a justification for  
58 an unequal distribution based on all relevant factors, including:

59                   (a) The contribution to the marriage by each spouse,  
60 including contributions to the care and education of the children  
61 and services as homemaker;

62                   (b) The economic circumstances of the parties;

63                   (c) The duration of the marriage;

64                   (d) Any interruption of personal careers or educational

65 opportunities of either party;

66           (e) The contribution of one spouse to the personal  
67 career or educational opportunity of the other spouse;

68           (f) The desirability of retaining any asset, including  
69 an interest in a business, corporation, or professional practice,  
70 intact and free from any claim or interference by the other party;

71           (g) The contribution of each spouse to the acquisition,  
72 enhancement, and production of income or the improvement of, or  
73 the incurring of liabilities to, both the marital assets and the  
74 nonmarital assets of the parties;

75           (h) The desirability of retaining the marital home as a  
76 residence for any dependent child of the marriage, or any other  
77 party, when it would be equitable to do so, it is in the best  
78 interest of the child or that party, and it is financially  
79 feasible for the parties to maintain the residence until the child  
80 is emancipated or until exclusive possession is otherwise  
81 terminated by a court of competent jurisdiction. In making this  
82 determination, the court shall first determine if it would be in  
83 the best interest of the dependent child to remain in the marital  
84 home; and, if not, whether other equities would be served by  
85 giving any other party exclusive use and possession of the marital  
86 home;

87           (i) The intentional dissipation, waste, depletion or  
88 destruction of marital assets after the filing of the complaint or  
89 within two (2) years prior to the filing of the complaint;

90           (j) The tax consequences of the property division upon  
91 the respective awards to be made to each spouse;

92           (k) Any other factors necessary to do equity and  
93 justice between the parties.

94           (3) If the court awards any cash payment for the purpose of  
95 equitable distribution of marital assets, to be paid in full or in  
96 installments, the full amount ordered shall vest when the judgment  
97 is awarded and the award shall not terminate upon remarriage or

98 death of either party, unless otherwise agreed to by the parties,  
99 but shall be treated as a debt owed from the obligor or the  
100 obligor's estate to the obligee or the obligee's estate, unless  
101 otherwise agreed to by the parties.

102 (4) In any contested divorce action wherein a stipulation  
103 and agreement has not been entered and filed, any distribution of  
104 marital assets or marital liabilities shall be supported by  
105 factual findings in the judgment or order based on competent  
106 substantial evidence with reference to the factors enumerated in  
107 subsection (2) of this section. The distribution of all marital  
108 assets and marital liabilities, whether equal or unequal, shall  
109 include specific written findings of fact as to the following:

110 (a) Clear identification of nonmarital assets and  
111 ownership interests;

112 (b) Identification of marital assets, including the  
113 individual valuation of significant assets, and designation of  
114 which spouse shall be entitled to each asset;

115 (c) Identification of the marital liabilities and  
116 designation of which spouse shall be responsible for each  
117 liability;

118 (d) Any other findings necessary to advise the parties  
119 or the reviewing court of the trial court's rationale for the  
120 distribution of marital assets and allocation of liabilities.

121 (5) A spouse to whom a liability has been assigned by order  
122 of the court shall be responsible for making all payments on a  
123 timely basis. Upon failure to do so, the other spouse may make  
124 the required payments if legally obligated to do so or to protect  
125 property awarded to the other spouse which secures the obligation.  
126 Any payments so made may be recovered from the defaulting spouse  
127 with interest at the legal rate plus reasonable attorney's fees or  
128 may be set off against payments, other than child support, due the  
129 defaulting spouse.

130 (6) (a) The order distributing assets shall have the effect

131 of a duly executed instrument of conveyance, transfer, release or  
132 acquisition which is recorded in the county where the land is  
133 located when the final order, or a certified copy of the final  
134 order, is properly recorded in the official land records of the  
135 county in which the land is located.

136 (b) If an appeal has been taken from the final order of  
137 the trial court, a certified copy of the appellate court's mandate  
138 affirming the transaction shall be attached to the order of the  
139 trial court at the time of recording. With respect to personal  
140 property, the final order of the trial court shall be effective as  
141 a bill of sale and, in the case of a titled motor vehicle, as an  
142 assignment of title by the registered owner of the vehicle.

143 (c) For all purposes of this section, the final order  
144 of the trial court shall not affect title to property, real or  
145 personal, until the time for all appeals has expired or, if an  
146 appeal is taken, the appellate court has issued its mandate  
147 affirming the transfer of title.

148 (7) Filing of a joint tax return shall not constitute  
149 nonmarital assets or liabilities as marital assets or liabilities.

150 (8) The cut-off date for determining assets and liabilities  
151 to be identified or classified as marital assets and liabilities  
152 is the earliest of the date the parties enter into a valid  
153 separation agreement, such other date as may be expressly  
154 established by such agreement, or the date of the filing of a  
155 complaint for divorce from the bonds of matrimony. The date for  
156 determining value of assets and the amount of liabilities  
157 identified or classified as marital is the date or dates as the  
158 judge determines is just and equitable under the circumstances.  
159 Different assets may be valued as of different dates, as, in the  
160 judge's discretion, the circumstances require.

161 (9) All assets acquired and liabilities incurred by either  
162 spouse subsequent to the date of the marriage and not specifically  
163 established as nonmarital assets or liabilities are presumed to be

164 marital assets and liabilities. Such presumption is overcome by a  
165 showing that the assets and liabilities are nonmarital assets and  
166 liabilities. The presumption is only for evidentiary purposes in  
167 the divorce proceeding and does not vest title. Title to disputed  
168 assets, as between spouses, shall vest only by the order of a  
169 court. This section does not require the joinder of spouses in  
170 the conveyance, transfer, encumbrance or hypothecation of a  
171 spouse's individual property, affect the laws of descent and  
172 distribution, affect the laws concerning child support nor  
173 establish community property in this state.

174 (10) The court may provide for equitable distribution of the  
175 marital assets and liabilities without regard to alimony for  
176 either party. After the determination of an equitable  
177 distribution of the marital assets and liabilities, the court  
178 shall consider whether any alimony shall be ordered.

179 (11) To do equity between the parties, the court shall take  
180 into account any evidence as to the taxation consequences of its  
181 order and may, in lieu of or to supplement, facilitate or  
182 effectuate the equitable division of marital assets and  
183 liabilities, order a monetary payment in a lump sum or in  
184 installments paid over a fixed period of time.

185 (12) With respect to real property, the provisions of this  
186 section shall not affect the rights and interests of bona fide  
187 purchasers and encumbrances for value without notice, and the  
188 filing of the complaint for divorce in the county where the land  
189 is located shall constitute constructive notice. Neither shall  
190 the provisions of this section affect the rights of persons who  
191 are not parties to the divorce proceeding pursuant to contracts,  
192 promissory notes, security agreements, mortgages and deeds of  
193 trust or other undertakings made in good faith and without intent  
194 to impair the rights of either spouse under this section.

195 SECTION 2. This act shall take effect and be in force from  
196 and after its passage.