

By: Blackmon

To: Judiciary

SENATE BILL NO. 2089

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.

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

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

15 93-5-22. (1) As used in this section:

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

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

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

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

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

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

34 The commingling of nonmarital property with other property of any  
35 type does not destroy the identity of the nonmarital property as  
36 nonmarital property;

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

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

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

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

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

53 (2) In a proceeding for divorce from the bonds of matrimony,  
54 in addition to all other remedies available to a court to do  
55 equity between the parties, the court shall set apart to each  
56 spouse that spouse's nonmarital assets and liabilities, and in

57 distributing the marital assets and liabilities between the  
58 parties, the court shall begin with the presumption that the  
59 distribution should be equal, unless there is a justification for  
60 an unequal distribution based on all relevant factors, including:

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

64 (b) The economic circumstances of the parties;

65 (c) The duration of the marriage;

66 (d) Any interruption of personal careers or educational  
67 opportunities of either party;

68 (e) The contribution of one (1) spouse to the personal  
69 career or educational opportunity of the other spouse;

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

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

77 (h) The desirability of retaining the marital home as a  
78 residence for any dependent child of the marriage, or any other  
79 party, when it would be equitable to do so, it is in the best  
80 interest of the child or that party, and it is financially  
81 feasible for the parties to maintain the residence until the child  
82 is emancipated or until exclusive possession is otherwise  
83 terminated by a court of competent jurisdiction. In making this  
84 determination, the court shall first determine if it would be in

85 the best interest of the dependent child to remain in the marital  
86 home; and, if not, whether other equities would be served by  
87 giving any other party exclusive use and possession of the marital  
88 home;

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

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

94 (k) The relative fault, if any, of the parties;

95 (l) Any other factors necessary to do equity and  
96 justice between the parties.

97 (3) If the court awards any cash payment for the purpose of  
98 equitable distribution of marital assets, to be paid in full or in  
99 installments, the full amount ordered shall vest when the judgment  
100 is awarded and the award shall not terminate upon remarriage or  
101 death of either party, unless otherwise agreed to by the parties,  
102 but shall be treated as a debt owed from the obligor or the  
103 obligor's estate to the obligee or the obligee's estate, unless  
104 otherwise agreed to by the parties.

105 (4) In any contested divorce action wherein a stipulation  
106 and agreement has not been entered and filed, any distribution of  
107 marital assets or marital liabilities shall be supported by  
108 factual findings in the judgment or order. The judgment or order  
109 relating to the distribution of all marital assets and marital  
110 liabilities, whether equal or unequal, shall include specific  
111 written findings of fact as to the following:

112 (a) Clear identification of nonmarital assets and

113 ownership interests;

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

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

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

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

132 (6) (a) The order distributing assets shall have the effect  
133 of a duly executed instrument of conveyance, transfer, release or  
134 acquisition which is recorded in the county where the land is  
135 located when the final order, or a certified copy of the final  
136 order, is properly recorded in the official land records of the  
137 county in which the land is located.

138 (b) If an appeal has been taken from the final order of  
139 the trial court, a certified copy of the appellate court's mandate  
140 affirming the transaction shall be attached to the order of the

141 trial court at the time of recording. With respect to personal  
142 property, the final order of the trial court shall be effective as  
143 a bill of sale and, in the case of a titled motor vehicle, as an  
144 assignment of title by the registered owner of the vehicle.

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

150 (7) Filing of a joint tax return shall not be used to  
151 determine nonmarital assets or liabilities as marital assets or  
152 liabilities.

153 (8) The cut-off date for determining assets and liabilities  
154 to be identified or classified as marital assets and liabilities  
155 is the earliest of the following dates: the date of the filing of  
156 a complaint for divorce from the bonds of matrimony, the date of  
157 final separation of the parties, or the date that the judge  
158 determines is just and equitable under the circumstances. The  
159 date for determining value of assets and the amount of liabilities  
160 identified or classified as marital is the date or dates as the  
161 judge determines is just and equitable under the circumstances.  
162 Different assets may be valued as of different dates, as, in the  
163 judge's discretion, the circumstances require.

164 (9) All assets acquired and liabilities incurred by either  
165 spouse subsequent to the date of the marriage and not specifically  
166 established as nonmarital assets or liabilities are presumed to be  
167 marital assets and liabilities. Such presumption is overcome by a  
168 showing that the assets and liabilities are nonmarital assets and

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

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

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

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

197 to impair the rights of either spouse under this section.

198 SECTION 2. This act shall take effect and be in force from

199 and after its passage.