

By: Blackmon

To: Judiciary

SENATE BILL NO. 2089
(As Passed the Senate)

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.