

By: Tollison, Chamberlin, Dawkins

To: Judiciary

SENATE BILL NO. 2535

1 AN ACT TO AMEND SECTION 91-5-3, MISSISSIPPI CODE OF 1972, TO
2 PROVIDE THAT PROVISIONS OF A WILL AFFECTING A SPOUSE SHALL BECOME
3 VOID UPON DISSOLUTION OF THE MARRIAGE; AND FOR RELATED PURPOSES.

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

5 SECTION 1. Section 91-5-3, Mississippi Code of 1972, is
6 amended as follows:[CSQ1]

7 91-5-3. (1) A devise so made, or any clause thereof, shall
8 not be revocable but by the testator or testatrix destroying,
9 canceling, or obliterating the same, or causing it to be done in
10 his or her presence, or by subsequent will, codicil, or
11 declaration, in writing, made and executed. Every Last Will and
12 Testament made when the testator or testatrix had no child living,
13 wherein any child he or she might have is not provided for or not
14 mentioned, if at the time of his or her death he or she have a
15 child, or if the testator leave his wife enceinte of a child who
16 shall be born, shall have no effect during the life of any such
17 after-born child and shall be void unless the child die without
18 having been married, or without leaving issue capable of
19 inheriting, and before he or she shall have attained twenty-one
20 (21) years. The estate, both real and personal, so devised shall
21 descend to such child in the same manner as if the testator or

22 testatrix had died intestate, subject, nevertheless, to the
23 bequests made in the Last Will and Testament in case of the death
24 of such child before marriage, or without issue capable of
25 inheriting, and under the age of twenty-one (21) years. When a
26 testator shall leave children born and his wife enceinte, the
27 posthumous child or children, if unprovided for by settlement and
28 neither provided for nor disinherited, but only pretermitted, by
29 the Last Will and Testament, shall succeed to the same portion of
30 the father's estate as such child or children would have been
31 entitled to if the father had died intestate, towards raising
32 which portion the devisees and legatees shall contribute
33 proportionably out of the parts devised and bequeathed to them by
34 the same will and testament.

35 (2) Any provisions of a will executed by a married person,
36 which provisions affect the spouse of that person including a
37 bequest or devise of property, the granting of a power or
38 nomination of the former spouse as a fiduciary, shall become void
39 upon the divorce of the parties or upon the dissolution or
40 annulment of the marriage. After the dissolution, divorce or
41 annulment, any such will shall be administered and construed as if
42 the former spouse had died at the time of the dissolution, divorce
43 or annulment of the marriage and predeceased the testator, unless
44 either the will or the judgment of dissolution or divorce
45 expressly provides otherwise. Remarriage to the former spouse
46 revives any provisions of the will that were nullified under this
47 section, unless another will has been executed. Nothing provided
48 in this section shall affect any rights of the testator's children
49 in gestation.

50 SECTION 2. This act shall take effect and be in force from
51 and after July 1, 2000.