

By: Representative Moody

To: Judiciary A

HOUSE BILL NO. 1023

1 AN ACT TO AMEND SECTIONS 41-57-23, 93-9-9 AND 93-9-28,
 2 MISSISSIPPI CODE OF 1972, TO PROVIDE THAT ANY PETITION OR
 3 COMPLAINT TO MAKE CHANGES TO A BIRTH CERTIFICATE RESULTING FROM A
 4 JUDICIAL DETERMINATION OF PATERNITY SHALL INCLUDE A CERTIFIED COPY
 5 OF THE BIRTH CERTIFICATE IN QUESTION, TO REQUIRE EVERY SIGNATORY
 6 TO A PATERNITY ACKNOWLEDGMENT TO BE NAMED A PARTY TO THE COURT
 7 PROCEEDINGS, TO REQUIRE ANY RESCISSION OF A BIRTH CERTIFICATE TO
 8 BE FILED WITH THE STATE DEPARTMENT OF HEALTH, TO REQUIRE A
 9 CERTIFIED COPY OF THE COURT DECREE ALTERING THE BIRTH CERTIFICATE
 10 TO BE FORWARDED TO THE STATE DEPARTMENT OF HEALTH AND TO PROVIDE
 11 THAT IN THE EVENT THE COURT ORDERS THE BIRTH CERTIFICATE TO BE
 12 AMENDED, THE FATHER'S NAME SHALL BE REMOVED FROM THE CERTIFICATE
 13 AND THE SURNAME OF THE CHILD SHALL BE CHANGED TO THE SURNAME OF
 14 THE MOTHER; AND FOR RELATED PURPOSES.

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

16 SECTION 1. Section 41-57-23, Mississippi Code of 1972, is
 17 amended as follows:

18 41-57-23. (1) Any petition, bill of complaint or other
 19 proceeding filed in the chancery court to: (a) change the date of
 20 birth by two (2) or more days, (b) change the surname of a child,
 21 (c) change the surname of either or both parents, (d) change the
 22 birthplace of the child because of an error or omission of such
 23 information as originally recorded or (e) make any changes or
 24 additions to a birth certificate resulting from a legitimation,
 25 filiation or any changes not specifically authorized elsewhere by
 26 statute, shall be filed in the county of residence of the
 27 petitioner or filed in any chancery court district of the state if
 28 the petitioner be a nonresident petitioner. In all such
 29 proceedings, except as otherwise provided in subsection 2, the
 30 State Department of Health shall be made a respondent therein, and
 31 a certified copy of the petition, bill of complaint or other
 32 proceeding shall be forwarded to the State Department of Health.

33 Process may be served upon the State Registrar of Vital Records.
34 The State Department of Health shall file an answer to all such
35 proceedings within the time as provided by general law. The
36 provisions of this section shall not apply to adoption
37 proceedings. Upon receipt of a certified copy of a decree, which
38 authorizes and directs the State Department of Health to alter the
39 certificate, it shall comply with all of the provisions of such
40 decree.

41 (2) Any petition, bill of complaint or other proceedings
42 filed in the chancery court to make any changes or additions to a
43 birth certificate resulting from a judicial determination of
44 paternity shall have attached to it as an exhibit a certified copy
45 of the birth certificate in question which shall have been issued
46 no more than thirty (30) days prior to the filing of the petition,
47 bill of complaint or other proceeding in order for the court to be
48 made aware of the information currently on the birth certificate.
49 In all such proceedings, the State Department of Health may be
50 made a respondent therein, and a certified copy of the petition,
51 bill of complaint or other proceeding shall be forwarded to the
52 State Department of Health. If made a respondent therein, process
53 may be served upon the State Registrar of Vital Records and the
54 State Department of Health shall file an answer to all such
55 proceedings within the time as provided by general law. The
56 provisions of this section shall not apply to adoption
57 proceedings. Upon receipt of a certified copy of a decree, which
58 authorizes and directs the State Department of Health to alter the
59 certificate, it shall comply with all of the provisions of such
60 decree and the surname of the child shall be that of the father,
61 unless the judgment specifies otherwise.

62 (3) If a child is born to a mother who was not married at
63 the time of conception or birth, or at any time between conception
64 and birth, and the natural father acknowledges paternity, the name
65 of the father shall be added to the birth certificate if a

66 notarized affidavit by both parents acknowledging paternity is
67 received on the form prescribed or as provided in Section 93-9-9.
68 The surname of the child shall be that of the father except that
69 an affidavit filed at birth by both listed mother and father may
70 alter this rule. In the event the mother was married at the time
71 of conception or birth, or at any time between conception and
72 birth, or if a father is already listed on the birth certificate,
73 action must be taken under Section 41-57-23(1) to add or change
74 the name of the father.

75 (4) (a) A signed voluntary acknowledgment of paternity is
76 subject to the right of any signatory to commence proceeding to
77 rescind the acknowledgment within the earlier of:

78 (i) Sixty (60) days; or

79 (ii) The date of a judicial proceeding relating to
80 the child, including a proceeding to establish a support order, in
81 which the signatory is a party.

82 (b) After the expiration of the sixty-day period
83 specified in subsection (3)(a)(i) of this section, a signed
84 voluntary acknowledgment of paternity may be challenged in court
85 only on the basis of fraud, duress, or material mistake of fact,
86 with the burden of proof upon the challenger; the legal
87 responsibilities, including child support obligations, of any
88 signatory arising from the acknowledgment may not be suspended
89 during the pendency of the challenge, except for good cause shown.

90 (c) Every signatory to an acknowledgment of paternity
91 must be made a party to a proceeding to rescind or challenge the
92 acknowledgment. For the purpose of rescission of or challenge to
93 an acknowledgment of paternity, a signatory submits to personal
94 jurisdiction of this state by signing the paternity acknowledgment
95 rescission and filing the document with the State Department of
96 Health. A proceeding to rescind or to challenge an acknowledgment
97 of paternity must be conducted in the same manner as a proceeding
98 to adjudicate parentage under Section 93-9-9. Except for good

99 cause shown, during the pendency of a proceeding to rescind or
100 challenge an acknowledgment of paternity, the court may not
101 suspend the legal responsibilities of a signatory arising from an
102 acknowledgment, including the duty to pay child support.

103 (d) At the conclusion of a proceeding to rescind or
104 challenge an acknowledgment of paternity, the court shall order
105 the State Department of Health to amend the birth record of the
106 child, if appropriate. In the event the court orders the birth
107 record of the child to be amended, the father's name shall be
108 removed from the birth record and the surname of the child shall
109 be changed to the surname of the mother, unless the judgment
110 specifies otherwise.

111 SECTION 2. Section 93-9-9, Mississippi Code of 1972, is
112 amended as follows:

113 93-9-9. (1) Paternity may be determined upon the petition
114 of the mother, or father, the child or any public authority
115 chargeable by law with the support of the child; provided that
116 such an adjudication after the death of the defendant must be made
117 only upon clear and convincing evidence. In all such proceedings,
118 a certified copy of the birth certificate in question which shall
119 have been issued no more than thirty (30) days prior to the filing
120 of the petition, bill of complaint or other proceeding shall be
121 attached as an exhibit to such pleading in order for the court to
122 be made aware of the information currently on the birth
123 certificate. If paternity has been lawfully determined, or has
124 been acknowledged in writing according to the laws of this state,
125 the liabilities of the noncustodial parent may be enforced in the
126 same or other proceedings by the custodial parent, the child, or
127 any public authority which has furnished or may furnish the
128 reasonable expenses of pregnancy, confinement, education,
129 necessary support and maintenance, and medical or funeral expenses
130 for the custodial parent or the child. The trier of fact shall
131 receive without the need for third-party foundation testimony

132 certified, attested or sworn documentation as evidence of (a)
133 childbirth records; (b) cost of filing fees; (c) court costs; (d)
134 services of process fees; (e) mailing cost; (f) genetic tests and
135 testing fees; (g) the department's attorney's fees; (h) in cases
136 where the state or any of its entities or divisions have provided
137 medical services to the child or the child's mother, all costs of
138 prenatal care, birthing, postnatal care and any other medical
139 expenses incurred by the child or by the mother as a consequence
140 of the mother's pregnancy or delivery; and (i) funeral expenses.
141 However, proceedings hereunder shall not be instituted by the
142 Department of Human Services after the child has reached the age
143 of eighteen (18) years but proceedings may be instituted by a
144 private attorney at any time until such child attains the age of
145 twenty-one (21) years unless the child has been emancipated as
146 provided in Section 93-5-23 and Section 93-11-65. In the event of
147 court determined paternity, a certified copy of the decree shall
148 be forwarded to the State Department of Health, authorizing and
149 directing the State Department of Health to alter the birth
150 certificate of the child in compliance with all the provisions of
151 such decree, and the surname of the child shall be that of the
152 father, unless the judgment specifies otherwise.

153 (2) If the alleged father in an action to determine
154 paternity to which the Department of Human Services is a party
155 fails to appear for a scheduled hearing after having been served
156 with process or subsequent notice consistent with the Rules of
157 Civil Procedure, his paternity of the child(ren) shall be
158 established by the court if an affidavit sworn to by the mother
159 averring the alleged father's paternity of the child has
160 accompanied the complaint to determine paternity. Said affidavit
161 shall constitute sufficient grounds for the court's finding of the
162 alleged father's paternity without the necessity of the presence
163 or testimony of the mother at the said hearing. The court shall,
164 upon motion by the Department of Human Services, enter a judgment

165 of paternity. Any person who shall willfully and knowingly file a
166 false affidavit shall be subject to a fine of not more than One
167 Thousand Dollars (\$1,000.00).

168 (3) Upon application of both parents to the State Department
169 of Health and receipt by the State Department of Health of a sworn
170 acknowledgement of paternity executed by both parents subsequent
171 to the birth of a child born out of wedlock, the birth certificate
172 of the child shall be amended to show such paternity if paternity
173 is not shown on the birth certificate. Upon request of the
174 parents for the legitimization of a child under this section, the
175 surname of the child shall be changed on the certificate to that
176 of the father.

177 (4) (a) A signed voluntary acknowledgment of paternity is
178 subject to the right of any signatory to rescind the
179 acknowledgment within the earlier of:

180 (i) Sixty (60) days; or

181 (ii) The date of a judicial proceeding relating to
182 the child, including a proceeding to establish a support order, in
183 which the signatory is a party.

184 (b) After the expiration of the sixty-day period
185 specified in subsection (4) (a) (i) of this section, a signed
186 voluntary acknowledgment of paternity may be challenged in court
187 only on the basis of fraud, duress, or material mistake of fact,
188 with the burden of proof upon the challenger; the legal
189 responsibilities, including child support obligations, of any
190 signatory arising from the acknowledgment may not be suspended
191 during the pendency of the challenge, except for good cause shown.

192 (c) Every signatory to an acknowledgment of paternity
193 must be made a party to a proceeding to rescind or challenge the
194 acknowledgment. For the purpose of rescission of or challenge to
195 an acknowledgment of paternity, a signatory submits to personal
196 jurisdiction of this state by signing the paternity acknowledgment
197 rescission and filing the document with the State Department of

198 Health. A proceeding to rescind or to challenge an acknowledgment
199 of paternity must be conducted in the same manner as a proceeding
200 to adjudicate parentage under Section 93-9-9. Except for good
201 cause shown, during the pendency of a proceeding to rescind or
202 challenge an acknowledgment of paternity, the court may not
203 suspend the legal responsibilities of a signatory arising from an
204 acknowledgment, including the duty to pay child support.

205 (d) At the conclusion of a proceeding to rescind or
206 challenge an acknowledgment of paternity, the court shall order
207 the State Department of Health to amend the birth record of the
208 child, if appropriate. In the event the court orders the birth
209 record of the child to be amended, the father's name shall be
210 removed from the birth record and the surname of the child shall
211 be changed to the surname of the mother, unless the judgment
212 specifies otherwise.

213 SECTION 3. Section 93-9-28, Mississippi Code of 1972, is
214 amended as follows:

215 93-9-28. (1) The Mississippi State Department of Health in
216 cooperation with the Mississippi Department of Human Services
217 shall develop a form and procedure which may be used to secure a
218 voluntary acknowledgement of paternity from the mother and father
219 of any child born out of wedlock in Mississippi. The form shall
220 clearly state on its face that the execution of the
221 acknowledgement of paternity shall result in the same legal effect
222 as if the father and mother had been married at the time of the
223 birth of the child. When such form has been completed according
224 to the established procedure and the signatures of both the mother
225 and father have been notarized, then such voluntary
226 acknowledgement shall constitute a full determination of the legal
227 parentage of the child. The completed voluntary acknowledgement
228 of paternity shall be filed with the Bureau of Vital Statistics of
229 the Mississippi State Department of Health. The name of the

230 father shall be entered on the certificate of birth upon receipt
231 of the completed voluntary acknowledgement.

232 (2) (a) A signed voluntary acknowledgment of paternity is
233 subject to the right of any signatory to rescind the
234 acknowledgment within the earlier of:

235 (i) Sixty (60) days; or

236 (ii) The date of a judicial proceeding relating to
237 the child, including a proceeding to establish a support order, in
238 which the signatory is a party.

239 (b) After the expiration of the sixty-day period
240 specified in subsection (2) (a) (i) of this section, a signed
241 voluntary acknowledgment of paternity may be challenged in court
242 only on the basis of fraud, duress, or material mistake of fact,
243 with the burden of proof upon the challenger; the legal
244 responsibilities, including child support obligations, of any
245 signatory arising from the acknowledgment may not be suspended
246 during the pendency of the challenge, except for good cause shown.

247 (c) Every signatory to an acknowledgment of paternity
248 must be made a party to a proceeding to rescind or challenge the
249 acknowledgment. For the purpose of rescission of or challenge to
250 an acknowledgment of paternity, a signatory submits to personal
251 jurisdiction of this state by signing the paternity acknowledgment
252 rescission and filing the document with the State Department of
253 Health. A proceeding to rescind or to challenge an acknowledgment
254 of paternity must be conducted in the same manner as a proceeding
255 to adjudicate parentage under Section 93-9-9. Except for good
256 cause shown, during the pendency of a proceeding to rescind or
257 challenge an acknowledgment of paternity, the court may not
258 suspend the legal responsibilities of a signatory arising from an
259 acknowledgment including the duty to pay child support.

260 (d) At the conclusion of a proceeding to rescind or
261 challenge an acknowledgment of paternity, the court shall order
262 the State Department of Health to amend the birth record of the

263 child, if appropriate. In the event the court orders the birth
264 record of the child to be amended, the father's name shall be
265 removed from the birth record and the surname of the child shall
266 be changed to the surname of the mother, unless the judgement
267 specifies otherwise.

268 (3) The Mississippi State Department of Health and the
269 Mississippi Department of Human Services shall cooperate to
270 establish procedures to facilitate the voluntary acknowledgement
271 of paternity by both father and mother at the time of the birth of
272 any child born out of wedlock. Such procedures shall establish
273 responsibilities for each of the departments and for hospitals,
274 birthing centers, midwives, and/or other birth attendants to seek
275 and report voluntary acknowledgements of paternity. In
276 establishing such procedures, the departments shall provide for
277 obtaining the Social Security account numbers of both the father
278 and mother on voluntary acknowledgements.

279 (4) Upon the birth of a child out of wedlock, the hospital,
280 birthing center, midwife or other birth attendant shall provide an
281 opportunity for the child's mother and natural father to complete
282 an acknowledgement of paternity by giving the mother and natural
283 father the appropriate forms and information developed through the
284 procedures established in subsection (3). The hospital, birthing
285 center, midwife or other birth attendant shall be responsible for
286 providing printed information, and audio visual material if
287 available, related to the acknowledgement of paternity, and shall
288 be required to provide notary services needed for the completion
289 of acknowledgements of paternity. The information described above
290 shall be provided to the mother and natural father, if present and
291 identifiable, within twenty-four (24) hours of birth or before the
292 mother is released. Such information, including forms, brochures,
293 pamphlets, video tapes and other media, shall be provided at no
294 cost to the hospital, birthing center or midwife by the

295 Mississippi State Department of Health, the Department of Human
296 Services or other appropriate agency.

297 SECTION 4. This act shall take effect and be in force from
298 and after July 1, 2001.