SENATE BILL NO. 2581

AN ACT TO BRING FORWARD SECTION 91-1-3, MISSISSIPPI CODE OF 1972; TO AMEND SECTION 91-1-5, MISSISSIPPI CODE OF 1972, TO REVISE INHERITANCE BY KINDRED OF THE HALF-BLOOD; TO AMEND SECTION 91-1-7, MISSISSIPPI CODE OF 1972, TO REVISE INHERITANCE BY BROTHERS AND SISTERS OF THE WHOLE AND HALF-BLOOD; TO BRING FORWARD SECTION 91-1-15, MISSISSIPPI CODE OF 1972; AND FOR RELATED PURPOSES.

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

SECTION 1. Section 91-1-3, Mississippi Code of 1972, is brought forward as follows:

91-1-3. When any person shall die seized of any estate of inheritance in lands, tenements, and hereditaments not devised, the same shall descend to his or her children, and their descendants, in equal parts, the descendants of the deceased child or grandchild to take the share of the deceased parent in equal parts among them. When there shall not be a child or children of the intestate nor descendants of such children, then to the brothers and sisters and father and mother of the intestate and the descendants of such brothers and sisters in equal parts, the descendants of a sister or brother of the intestate to have in equal parts among them their deceased parent's share. If there shall not be a child or children of the intestate, or descendants of such children, or brothers or sisters, or descendants of them, or father or mother, then such estate shall descend, in equal parts, to the grandparents and uncles and aunts, if any there be; otherwise, such estate shall descend in equal parts to the next of kin of the intestate in equal degree, computing by the rules of the civil law. There shall not be any representation among
collaterals, except among the descendants of the brothers and
sisters of the intestate.

SECTION 2. Section 91-1-5, Mississippi Code of 1972, is
amended as follows:

91-1-5. There shall not be, in any case, a distinction
between the kindred of the whole and half-blood, except that the
kindred of the whole-blood, in equal degree, shall be preferred to
the kindred of the half-blood in the same degree except as may be
specifically provided by law.

SECTION 3. Section 91-1-7, Mississippi Code of 1972, is
amended as follows:

91-1-7. If a person dies intestate leaving no children or
descendants of children, the surviving spouse of the decedent
shall be entitled to the decedent's entire estate, real and
personal, in fee simple, after payment of the decedent's debts;
but where the deceased * * * shall leave a child or children by
that or a former marriage, or descendants of such child or
children, the surviving spouse shall have a child's part of the
estate, in either case in fee simple. * * * If * * * there are
descendants of other children who have died before the decedent,
the descendants shall inherit the share to which the parent would
have been entitled if living, as coheirs with the surviving
children. * * *

The property that devolves to the brothers or sisters is
divided among them equally, if they are all born of the same
parents. If they are born of different unions, it is equally
divided between the paternal and maternal lines of the deceased;
brothers or sisters fully related by blood take in both lines and
those related by half-blood take each in his own line. If there
are brothers or sisters on one side only, they take the entirety
to the exclusion of all relations in the other line.

SECTION 4. Section 91-1-15, Mississippi Code of 1972, is
brought forward as follows:
91-1-15. (1) The following terms shall have the meaning ascribed to them herein:

(a) "Remedy" means the right of an illegitimate to commence and maintain a judicial proceeding to enforce a claim to inherit property from the estate of the natural mother or father of such illegitimate, said claim having been heretofore prohibited by law, or prohibited by statutes requiring marriage between the natural parents, or restrained, or enjoined by the order or process of any court in this state.

(b) "Claim" means the right to assert a demand on behalf of an illegitimate to inherit property, either personal or real, from the estate of the natural mother or father of such illegitimate.

(c) "Illegitimate" means a person who at the time of his birth was born to natural parents not married to each other and said person was not legitimized by subsequent marriage to said parents or legitimized through a proper judicial proceeding.

(d) "Natural parents" means the biological mother or father of the illegitimate.

(2) An illegitimate shall inherit from and through the illegitimate's mother and her kindred, and the mother of an illegitimate and her kindred shall inherit from and through the illegitimate according to the statutes of descent and distribution. However, if an illegitimate shall die unmarried and without issue, and shall also predecease the natural father, the natural mother or her kindred shall not inherit any part of the natural father's estate from or through the illegitimate. In the event of the death of an illegitimate, unmarried and without issue, any part of the illegitimate's estate inherited from the natural father shall be inherited according to the statutes of descent and distribution.

(3) An illegitimate shall inherit from and through the illegitimate's natural father and his kindred, and the natural
father of an illegitimate and his kindred shall inherit from and through the illegitimate according to the statutes of descent and distribution if:

(a) The natural parents participated in a marriage ceremony before the birth of the child, even though the marriage was subsequently declared null and void or dissolved by a court; or

(b) There has been an adjudication of paternity or legitimacy before the death of the intestate; or

(c) There has been an adjudication of paternity after the death of the intestate, based upon clear and convincing evidence, in an heirship proceeding under Sections 91-1-27 and 91-1-29. However, no such claim of inheritance shall be recognized unless the action seeking an adjudication of paternity is filed within one (1) year after the death of the intestate or within ninety (90) days after the first publication of notice to creditors to present their claims, whichever is less; and such time period shall run notwithstanding the minority of a child. No claim of inheritance based on an adjudication of paternity, after death of the intestate, by a court outside the State of Mississippi shall be recognized unless:

(i) Such court was in the state of residence of the intestate at the time of the intestate's death;

(ii) The action adjudicating paternity was filed within ninety (90) days after the death of the intestate;

(iii) All known heirs were made parties to the action; and

(iv) Paternity or legitimacy was established by clear and convincing evidence.

(d) The natural father of an illegitimate and his kindred shall not inherit:
(i) From or through the child unless the father has openly treated the child as his, and has not refused or neglected to support the child.

(ii) Any part of the natural mother's estate from or through the illegitimate if the illegitimate dies unmarried and without issue, and also predeceases the natural mother. In the event of the death of an illegitimate, unmarried and without issue, any part of the illegitimate's estate inherited from the mother shall be inherited according to the statutes of descent and distribution.

A remedy is hereby created in favor of all illegitimates having any claim existing prior to July 1, 1981, concerning the estate of an intestate whose death occurred prior to such date by or on behalf of an illegitimate or an alleged illegitimate child to inherit from or through its natural father and any claim by a natural father to inherit from or through an illegitimate child shall be brought within three (3) years from and after July 1, 1981, and such time period shall run notwithstanding the minority of a child.

The remedy created herein is separate, complete and distinct, but cumulative with the remedies afforded illegitimates as provided by the Mississippi Uniform Law on Paternity; provided, however, the failure of an illegitimate to seek or obtain relief under the Mississippi Uniform Law on Paternity shall not diminish or abate the remedy created herein.

(4) The children of illegitimates and their descendants shall inherit from and through their mother and father according to the statutes of descent and distribution.

SECTION 5. This act shall take effect and be in force from and after January 1, 2002.