

By: Senator(s) Posey (By Request)

To: Judiciary

SENATE BILL NO. 2581

1 AN ACT TO BRING FORWARD SECTION 91-1-3, MISSISSIPPI CODE OF
2 1972; TO AMEND SECTION 91-1-5, MISSISSIPPI CODE OF 1972, TO REVISE
3 INHERITANCE BY KINDRED OF THE HALF-BLOOD; TO AMEND SECTION 91-1-7,
4 MISSISSIPPI CODE OF 1972, TO REVISE INHERITANCE BY BROTHERS AND
5 SISTERS OF THE WHOLE AND HALF-BLOOD; TO BRING FORWARD SECTION
6 91-1-15, MISSISSIPPI CODE OF 1972; AND FOR RELATED PURPOSES.

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

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

10 91-1-3. When any person shall die seized of any estate of
11 inheritance in lands, tenements, and hereditaments not devised,
12 the same shall descend to his or her children, and their
13 descendants, in equal parts, the descendants of the deceased child
14 or grandchild to take the share of the deceased parent in equal
15 parts among them. When there shall not be a child or children of
16 the intestate nor descendants of such children, then to the
17 brothers and sisters and father and mother of the intestate and
18 the descendants of such brothers and sisters in equal parts, the
19 descendants of a sister or brother of the intestate to have in
20 equal parts among them their deceased parent's share. If there
21 shall not be a child or children of the intestate, or descendants
22 of such children, or brothers or sisters, or descendants of them,
23 or father or mother, then such estate shall descend, in equal
24 parts, to the grandparents and uncles and aunts, if any there be;
25 otherwise, such estate shall descend in equal parts to the next of
26 kin of the intestate in equal degree, computing by the rules of
27 the civil law. There shall not be any representation among

28 collaterals, except among the descendants of the brothers and
29 sisters of the intestate.

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

32 91-1-5. There shall not be, in any case, a distinction
33 between the kindred of the whole and half-blood, except that the
34 kindred of the whole-blood, in equal degree, shall be preferred to
35 the kindred of the half-blood in the same degree except as may be
36 specifically provided by law.

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

39 91-1-7. If a person dies intestate leaving no children or
40 descendants of children, the surviving spouse of the decedent
41 shall be entitled to the decedent's entire estate, real and
42 personal, in fee simple, after payment of the decedent's debts;
43 but where the deceased * * * shall leave a child or children by
44 that or a former marriage, or descendants of such child or
45 children, the surviving spouse shall have a child's part of the
46 estate, in either case in fee simple. * * * If * * * there are
47 descendants of other children who have died before the decedent,
48 the descendants shall inherit the share to which the parent would
49 have been entitled if living, as coheirs with the surviving
50 children. * * *

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

59 SECTION 4. Section 91-1-15, Mississippi Code of 1972, is
60 brought forward as follows:

61 91-1-15. (1) The following terms shall have the meaning
62 ascribed to them herein:

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

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

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

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

80 (2) An illegitimate shall inherit from and through the
81 illegitimate's mother and her kindred, and the mother of an
82 illegitimate and her kindred shall inherit from and through the
83 illegitimate according to the statutes of descent and
84 distribution. However, if an illegitimate shall die unmarried and
85 without issue, and shall also predecease the natural father, the
86 natural mother or her kindred shall not inherit any part of the
87 natural father's estate from or through the illegitimate. In the
88 event of the death of an illegitimate, unmarried and without
89 issue, any part of the illegitimate's estate inherited from the
90 natural father shall be inherited according to the statutes of
91 descent and distribution.

92 (3) An illegitimate shall inherit from and through the
93 illegitimate's natural father and his kindred, and the natural

94 father of an illegitimate and his kindred shall inherit from and
95 through the illegitimate according to the statutes of descent and
96 distribution if:

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

100 or

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

103 (c) There has been an adjudication of paternity after
104 the death of the intestate, based upon clear and convincing
105 evidence, in an heirship proceeding under Sections 91-1-27 and
106 91-1-29. However, no such claim of inheritance shall be
107 recognized unless the action seeking an adjudication of paternity
108 is filed within one (1) year after the death of the intestate or
109 within ninety (90) days after the first publication of notice to
110 creditors to present their claims, whichever is less; and such
111 time period shall run notwithstanding the minority of a child. No
112 claim of inheritance based on an adjudication of paternity, after
113 death of the intestate, by a court outside the State of
114 Mississippi shall be recognized unless:

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

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

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

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

123 (d) The natural father of an illegitimate and his
124 kindred shall not inherit:

125 (i) From or through the child unless the father
126 has openly treated the child as his, and has not refused or
127 neglected to support the child.

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

135 A remedy is hereby created in favor of all illegitimates
136 having any claim existing prior to July 1, 1981, concerning the
137 estate of an intestate whose death occurred prior to such date by
138 or on behalf of an illegitimate or an alleged illegitimate child
139 to inherit from or through its natural father and any claim by a
140 natural father to inherit from or through an illegitimate child
141 shall be brought within three (3) years from and after July 1,
142 1981, and such time period shall run notwithstanding the minority
143 of a child.

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

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

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