

By: Representative Gunn

To: Judiciary A

HOUSE BILL NO. 1056

1 AN ACT TO AMEND SECTION 91-1-15, MISSISSIPPI CODE OF 1972, TO
2 REVISE CONDITIONS UPON WHICH AN ILLEGITIMATE CHILD MAY INHERIT
3 FROM THE NATURAL FATHER; AND FOR RELATED PURPOSES.

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

5 SECTION 1. Section 91-1-15, Mississippi Code of 1972, is
6 amended as follows:

7 91-1-15. (1) The following terms shall have the meaning
8 ascribed to them herein:

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

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

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

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

26 (2) An illegitimate shall inherit from and through the
27 illegitimate's mother and her kindred, and the mother of an

28 illegitimate and her kindred shall inherit from and through the
29 illegitimate according to the statutes of descent and
30 distribution. However, if an illegitimate shall die unmarried and
31 without issue, and shall also predecease the natural father, the
32 natural mother or her kindred shall not inherit any part of the
33 natural father's estate from or through the illegitimate. In the
34 event of the death of an illegitimate, unmarried and without
35 issue, any part of the illegitimate's estate inherited from the
36 natural father shall be inherited according to the statutes of
37 descent and distribution.

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

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

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

49 (c) There has been an adjudication of paternity after
50 the death of the intestate, based upon clear and convincing
51 evidence, in an heirship proceeding under Sections 91-1-27 and
52 91-1-29. However, no such claim of inheritance shall be
53 recognized unless the action seeking an adjudication of paternity
54 is filed within one (1) year after the death of the intestate.
55 This limitation shall be self-executing and may not be tolled for
56 any reason, including lack of notice. If an administrator is
57 appointed for the estate of the intestate and notice to creditors
58 is given, then the limitation period shall be reduced to ninety
59 (90) days after the first publication of notice, if less than one
60 (1) year from the date of the intestate's death; provided notice

61 is given to all potential heirs who could be located with
62 reasonable diligence. No claim of inheritance based on an
63 adjudication of paternity, after death of the intestate, by a
64 court outside the State of Mississippi shall be recognized unless:

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

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

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

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

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

75 (i) From or through the child unless the father
76 has openly treated the child as his, and has not refused or
77 neglected to support the child.

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

85 A remedy is hereby created in favor of all illegitimates
86 having any claim existing prior to July 1, 1981, concerning the
87 estate of an intestate whose death occurred prior to such date by
88 or on behalf of an illegitimate or an alleged illegitimate child
89 to inherit from or through its natural father and any claim by a
90 natural father to inherit from or through an illegitimate child
91 shall be brought within three (3) years from and after July 1,
92 1981, and such time period shall run notwithstanding the minority
93 of a child.

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

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

103 **SECTION 2.** This act shall take effect and be in force from
104 and after July 1, 2005.