

By: Representatives Gregory, Clark,
Fillingane, Hamilton (6th), Hines, Ishee,
Masterson, Jennings, Ellington, Martinson,
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To: Judiciary A

HOUSE BILL NO. 1117

1 AN ACT TO AMEND SECTION 93-9-9, MISSISSIPPI CODE OF 1972, TO
2 PROVIDE THAT IN PATERNITY PROCEEDINGS THE BEST INTEREST OF THE
3 CHILD SHALL DETERMINE THE SURNAME OF A CHILD; TO AMEND SECTION
4 41-57-23, MISSISSIPPI CODE OF 1972, IN CONFORMITY; AND FOR RELATED
5 PURPOSES.

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

7 **SECTION 1.** Section 93-9-9, Mississippi Code of 1972, is
8 amended as follows:

9 93-9-9. (1) Paternity may be determined upon the petition
10 of the mother, or father, the child or any public authority
11 chargeable by law with the support of the child; provided that
12 such an adjudication after the death of the defendant must be made
13 only upon clear and convincing evidence. If paternity has been
14 lawfully determined, or has been acknowledged in writing according
15 to the laws of this state, the liabilities of the noncustodial
16 parent may be enforced in the same or other proceedings by the
17 custodial parent, the child, or any public authority which has
18 furnished or may furnish the reasonable expenses of pregnancy,
19 confinement, education, necessary support and maintenance, and
20 medical or funeral expenses for the custodial parent or the child.
21 The trier of fact shall receive without the need for third-party
22 foundation testimony certified, attested or sworn documentation as
23 evidence of (a) childbirth records; (b) cost of filing fees; (c)
24 court costs; (d) services of process fees; (e) mailing cost; (f)
25 genetic tests and testing fees; (g) the department's attorney's
26 fees; (h) in cases where the state or any of its entities or
27 divisions have provided medical services to the child or the
28 child's mother, all costs of prenatal care, birthing, postnatal

29 care and any other medical expenses incurred by the child or by
30 the mother as a consequence of the mother's pregnancy or delivery;
31 and (i) funeral expenses. All costs and fees shall be ordered
32 paid to the Department of Human Services in all cases successfully
33 prosecuted with a minimum of Two Hundred Fifty Dollars (\$250.00)
34 in attorney's fees or an amount determined by the court without
35 submitting an affidavit. However, proceedings hereunder shall not
36 be instituted by the Department of Human Services after the child
37 has reached the age of eighteen (18) years but proceedings may be
38 instituted by a private attorney at any time until such child
39 attains the age of twenty-one (21) years unless the child has been
40 emancipated as provided in Section 93-5-23 and Section 93-11-65.
41 In the event of court-determined paternity, the surname of the
42 child shall be determined based on the best interest of the child.

43 (2) If the alleged father in an action to determine
44 paternity to which the Department of Human Services is a party
45 fails to appear for a scheduled hearing after having been served
46 with process or subsequent notice consistent with the Rules of
47 Civil Procedure, his paternity of the child(ren) shall be
48 established by the court if an affidavit sworn to by the mother
49 averring the alleged father's paternity of the child has
50 accompanied the complaint to determine paternity. Said affidavit
51 shall constitute sufficient grounds for the court's finding of the
52 alleged father's paternity without the necessity of the presence
53 or testimony of the mother at the said hearing. The court shall,
54 upon motion by the Department of Human Services, enter a judgment
55 of paternity. Any person who shall willfully and knowingly file a
56 false affidavit shall be subject to a fine of not more than One
57 Thousand Dollars (\$1,000.00).

58 (3) Upon application of both parents to the State Board of
59 Health and receipt by the State Board of Health of a sworn
60 acknowledgement of paternity executed by both parents subsequent
61 to the birth of a child born out of wedlock, the birth certificate

62 of the child shall be amended to show such paternity if paternity
63 is not shown on the birth certificate. Upon request of the
64 parents for the legitimization of a child under this section and
65 if the best interest of the child will be served, the surname of
66 the child shall be changed on the certificate to that of the
67 father.

68 (4) (a) A signed voluntary acknowledgment of paternity is
69 subject to the right of any signatory to rescind the
70 acknowledgment within the earlier of:

71 (i) Sixty (60) days; or

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

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

83 **SECTION 2.** Section 41-57-23, Mississippi Code of 1972, is
84 amended as follows:

85 41-57-23. (1) Any petition, bill of complaint or other
86 proceeding filed in the chancery court to: (a) change the date of
87 birth by two (2) or more days, (b) change the surname of a child,
88 (c) change the surname of either or both parents, (d) change the
89 birthplace of the child because of an error or omission of such
90 information as originally recorded or (e) make any changes or
91 additions to a birth certificate resulting from a legitimation,
92 filiation or any changes not specifically authorized elsewhere by
93 statute, shall be filed in the county of residence of the
94 petitioner or filed in any chancery court district of the state if

95 the petitioner be a nonresident petitioner. In all such
96 proceedings, the State Board of Health shall be made a respondent
97 therein, and a certified copy of the petition, bill of complaint
98 or other proceeding shall be forwarded to the State Board of
99 Health. Process may be served upon the State Registrar of Vital
100 Records. The State Board of Health shall file an answer to all
101 such proceedings within the time as provided by general law. The
102 provisions of this section shall not apply to adoption
103 proceedings. Upon receipt of a certified copy of a decree, which
104 authorizes and directs the State Board of Health to alter the
105 certificate, it shall comply with all of the provisions of such
106 decree.

107 (2) If a child is born to a mother who was not married at
108 the time of conception or birth, or at any time between conception
109 and birth, and the natural father acknowledges paternity, the name
110 of the father shall be added to the birth certificate if a
111 notarized affidavit by both parents acknowledging paternity is
112 received on the form prescribed or as provided in Section 93-9-9.
113 The surname of the child shall be that of the father except that
114 an affidavit filed at birth by both listed mother and father or
115 the best interest of the child may alter this rule. In the event
116 the mother was married at the time of conception or birth, or at
117 any time between conception and birth, or if a father is already
118 listed on the birth certificate, action must be taken under
119 Section 41-57-23(1) to add or change the name of the father.

120 (3) (a) A signed voluntary acknowledgment of paternity is
121 subject to the right of any signatory to rescind the
122 acknowledgment within the earlier of:

123 (i) Sixty (60) days; or

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

127 (b) After the expiration of the sixty-day period
128 specified in subsection (3)(a)(i) of this section, a signed
129 voluntary acknowledgment of paternity may be challenged in court
130 only on the basis of fraud, duress, or material mistake of fact,
131 with the burden of proof upon the challenger; the legal
132 responsibilities, including child support obligations, of any
133 signatory arising from the acknowledgment may not be suspended
134 during the pendency of the challenge, except for good cause shown.
135 **SECTION 3.** This act shall take effect and be in force from
136 and after July 1, 2005.