

By: Representative Guice

To: Judiciary A

HOUSE BILL NO. 336

1 AN ACT TO AMEND SECTIONS 93-5-24, 93-13-1, 93-13-13 AND  
2 93-17-3, MISSISSIPPI CODE OF 1972, TO GIVE GRANDPARENTS PRIORITY  
3 IN CERTAIN CUSTODY ORDERS, GUARDIANSHIPS AND ADOPTIONS; TO BRING  
4 FORWARD SECTION 93-16-3, MISSISSIPPI CODE OF 1972, REGARDING  
5 GRANDPARENTS' VISITATION RIGHTS; AND FOR RELATED PURPOSES.

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

7 **SECTION 1.** Section 93-5-24, Mississippi Code of 1972, is  
8 amended as follows:

9 93-5-24. (1) Custody shall be awarded as follows according  
10 to the best interests of the child:

11 (a) Physical and legal custody to both parents jointly  
12 pursuant to subsections (2) through (7).

13 (b) Physical custody to both parents jointly pursuant  
14 to subsections (2) through (7) and legal custody to either parent.

15 (c) Legal custody to both parents jointly pursuant to  
16 subsections (2) through (7) and physical custody to either parent.

17 (d) Physical and legal custody to either parent.

18 (e) Upon a finding by the court that both of the  
19 parents of the child have abandoned or deserted such child or that  
20 both such parents are mentally, morally or otherwise unfit to rear  
21 and train the child the court may award physical and legal custody  
22 to:

23 (i) The person in whose home the child has been  
24 living in a wholesome and stable environment; or

25 (ii) Physical and legal custody to any other  
26 person deemed by the court to be suitable and able to provide  
27 adequate and proper care and guidance for the child.

28           In making an order for custody to either parent or to both  
29 parents jointly, the court, in its discretion, may require the  
30 parents to submit to the court a plan for the implementation of  
31 the custody order.

32           (2) Joint custody may be awarded where irreconcilable  
33 differences is the ground for divorce, in the discretion of the  
34 court, upon application of both parents.

35           (3) In other cases, joint custody may be awarded, in the  
36 discretion of the court, upon application of one or both parents.

37           (4) There shall be a presumption that joint custody is in  
38 the best interest of a minor child where both parents have agreed  
39 to an award of joint custody.

40           (5) (a) For the purposes of this section, "joint custody"  
41 means joint physical and legal custody.

42                   (b) For the purposes of this section, "physical  
43 custody" means those periods of time in which a child resides with  
44 or is under the care and supervision of one (1) of the parents.

45                   (c) For the purposes of this section, "joint physical  
46 custody" means that each of the parents shall have significant  
47 periods of physical custody. Joint physical custody shall be  
48 shared by the parents in such a way so as to assure a child of  
49 frequent and continuing contact with both parents.

50                   (d) For the purposes of this section, "legal custody"  
51 means the decision-making rights, the responsibilities and the  
52 authority relating to the health, education and welfare of a  
53 child.

54                   (e) For the purposes of this section, "joint legal  
55 custody" means that the parents or parties share the  
56 decision-making rights, the responsibilities and the authority  
57 relating to the health, education and welfare of a child. An  
58 award of joint legal custody obligates the parties to exchange  
59 information concerning the health, education and welfare of the

60 minor child, and to confer with one another in the exercise of  
61 decision-making rights, responsibilities and authority.

62 An award of joint physical and legal custody obligates the  
63 parties to exchange information concerning the health, education  
64 and welfare of the minor child, and unless allocated, apportioned  
65 or decreed, the parents or parties shall confer with one another  
66 in the exercise of decision-making rights, responsibilities and  
67 authority.

68 (6) Any order for joint custody may be modified or  
69 terminated upon the petition of both parents or upon the petition  
70 of one (1) parent showing that a material change in circumstances  
71 has occurred.

72 (7) There shall be no presumption that it is in the best  
73 interest of a child that a mother be awarded either legal or  
74 physical custody.

75 (8) Notwithstanding any other provision of law, access to  
76 records and information pertaining to a minor child, including,  
77 but not limited to, medical, dental and school records, shall not  
78 be denied to a parent because the parent is not the child's  
79 custodial parent.

80 (9) (a) (i) In every proceeding where the custody of a  
81 child is in dispute, there shall be a rebuttable presumption that  
82 it is detrimental to the child and not in the best interest of the  
83 child to be placed in sole custody, joint legal custody or joint  
84 physical custody of a parent who has a history of perpetrating  
85 family violence. The court may find a history of perpetrating  
86 family violence if the court finds, by a preponderance of the  
87 evidence, one (1) incident of family violence that has resulted in  
88 serious bodily injury to, or a pattern of family violence against,  
89 the party making the allegation or a family household member of  
90 either party. The court shall make written findings to document  
91 how and why the presumption was or was not triggered.

92                   (ii) This presumption may only be rebutted by a  
93 preponderance of the evidence.

94                   (iii) In determining whether the presumption set  
95 forth in subsection (9) has been overcome, the court shall  
96 consider all of the following factors:

97                   1. Whether the perpetrator of family violence  
98 has demonstrated that giving sole or joint physical or legal  
99 custody of a child to the perpetrator is in the best interest of  
100 the child because of the other parent's absence, mental illness,  
101 substance abuse or such other circumstances which affect the best  
102 interest of the child or children;

103                   2. Whether the perpetrator has successfully  
104 completed a batterer's treatment program;

105                   3. Whether the perpetrator has successfully  
106 completed a program of alcohol or drug abuse counseling if the  
107 court determines that counseling is appropriate;

108                   4. Whether the perpetrator has successfully  
109 completed a parenting class if the court determines the class to  
110 be appropriate;

111                   5. If the perpetrator is on probation or  
112 parole, whether he or she is restrained by a protective order  
113 granted after a hearing, and whether he or she has complied with  
114 its terms and conditions; and

115                   6. Whether the perpetrator of domestic  
116 violence has committed any further acts of domestic violence.

117                   (iv) The court shall make written findings to  
118 document how and why the presumption was or was not rebutted.

119                   (b) (i) If custody is awarded to a suitable third  
120 person, it shall not be until the natural grandparents of the  
121 child have been excluded and such person shall not allow access to  
122 a violent parent except as ordered by the court.

123                   (ii) If the court finds that both parents have a  
124 history of perpetrating family violence, but the court finds that

125 parental custody would be in the best interest of the child,  
126 custody may be awarded solely to the parent less likely to  
127 continue to perpetrate family violence. In such a case, the court  
128 may mandate completion of a treatment program by the custodial  
129 parent.

130 (c) If the court finds that the allegations of domestic  
131 violence are completely unfounded, the chancery court shall order  
132 the alleging party to pay all court costs and reasonable  
133 attorney's fees incurred by the defending party in responding to  
134 such allegations.

135 (d) (i) A court may award visitation by a parent who  
136 committed domestic or family violence only if the court finds that  
137 adequate provision for the safety of the child and the parent who  
138 is a victim of domestic or family violence can be made.

139 (ii) In a visitation order, a court may take any  
140 of the following actions:

141 1. Order an exchange of the child to occur in  
142 a protected setting;

143 2. Order visitation supervised in a manner to  
144 be determined by the court;

145 3. Order the perpetrator of domestic or  
146 family violence to attend and complete to the satisfaction of the  
147 court a program of intervention for perpetrators or other  
148 designated counseling as a condition of visitation;

149 4. Order the perpetrator of domestic or  
150 family violence to abstain from possession or consumption of  
151 alcohol or controlled substances during the visitation and for  
152 twenty-four (24) hours preceding the visitation;

153 5. Order the perpetrator of domestic or  
154 family violence to pay a fee to defray the cost of supervised  
155 visitation;

156 6. Prohibit overnight visitation;

157                   7. Require a bond from the perpetrator of  
158 domestic or family violence for the return and safety of the  
159 child; or

160                   8. Impose any other condition that is deemed  
161 necessary to provide for the safety of the child, the victim of  
162 family or domestic violence, or other family or household member.

163                   (iii) Whether or not visitation is allowed, the  
164 court may order the address of the child or the victim of family  
165 or domestic violence to be kept confidential.

166                   (e) The court may refer but shall not order an adult  
167 who is a victim of family or domestic violence to attend  
168 counseling relating to the victim's status or behavior as a  
169 victim, individually or with the perpetrator of domestic or family  
170 violence, as a condition of receiving custody of a child or as a  
171 condition of visitation.

172                   (f) If a court allows a family or household member to  
173 supervise visitation, the court shall establish conditions to be  
174 followed during visitation.

175                   (10) If custody is not to be awarded to either of the  
176 parents, priority shall be given to the grandparents of the child.

177                   **SECTION 2.** Section 93-13-1, Mississippi Code of 1972, is  
178 amended as follows:

179                   93-13-1. The father and mother are the joint natural  
180 guardians of their minor children and are equally charged with  
181 their care, nurture, welfare and education, and the care and  
182 management of their estates. The father and mother shall have  
183 equal powers and rights, and neither parent has any right  
184 paramount to the right of the other concerning the custody of the  
185 minor or the control of the services or the earnings of such  
186 minor, or any other matter affecting the minor. If either father  
187 or mother die or be incapable of acting, the guardianship devolves  
188 upon the surviving parent. Neither parent shall forcibly take a  
189 child from the guardianship of the parent legally entitled to its

190 custody. But if any father or mother be unsuitable to discharge  
191 the duties of guardianship, then the court, or chancellor in  
192 vacation, may appoint some suitable person, or having appointed  
193 the father or mother, may remove him or her if it appear that such  
194 person is unsuitable, and appoint a suitable person. Priority  
195 shall be given to the grandparents of a child in determining the  
196 guardianship if neither parent is living or capable of acting as  
197 guardian.

198 **SECTION 3.** Section 93-13-13, Mississippi Code of 1972, is  
199 amended as follows:

200 93-13-13. When a testamentary guardian has not been  
201 appointed by the parent, or if appointed, has not qualified, the  
202 chancery court of the county of the residence of a ward who has an  
203 estate, real or personal, shall appoint a general guardian of his  
204 estate for him or may appoint a general guardian of his person and  
205 estate for him. Priority shall be given to the grandparents in  
206 such appointment. If a ward has no estate the chancery court of  
207 the county of the residence of such ward may appoint a general  
208 guardian of his person only for him, giving preference in all  
209 cases to the natural guardian, or next of kin, if any apply,  
210 unless the applicant be manifestly unsuitable for the discharge of  
211 the duties. The court may allow a minor who is over the age of  
212 fourteen (14) years and under no legal disability except minority  
213 to select a general guardian, by petition to the court, signed and  
214 acknowledged before the clerk or a justice of the peace, and duly  
215 filed, but if the general guardian so selected by the minor be  
216 guardian of the person and estate of the minor or the person only  
217 of the minor then such general guardian so selected by said minor  
218 shall be a suitable and qualified person who is a resident of this  
219 state and the county in which the guardianship proceedings are  
220 pending. If the said minor desires to so select a person as  
221 general guardian of his person and estate or of his person only  
222 who is a resident of this state but who is not a resident of the

223 county in which the guardianship proceedings are pending he may do  
224 so but thereupon such guardianship proceedings or cause shall be  
225 transferred to the county of the residence of such general  
226 guardian so selected and thereupon the minor shall be and become a  
227 legal resident of the county of the residence of such general  
228 guardian so selected. The said minor may select in the above  
229 manner a general guardian of his estate only which may be a  
230 corporation but such corporation shall be duly qualified to do  
231 business in this state and otherwise suitable. If said minor  
232 select a person other than the natural guardian to be either the  
233 general guardian of his estate or general guardian of his person  
234 and estate or general guardian of his person only the court shall,  
235 notwithstanding, have power to appoint the natural guardian, if  
236 deemed suitable. And if any such minor over the age of fourteen  
237 (14) years fails to appear and select a general guardian of his  
238 estate only or of his estate and person or of his person only when  
239 summoned, or if the general guardian chosen fails to qualify, and  
240 no other be chosen in his stead, the court shall appoint a general  
241 guardian to the minor as if he were under fourteen (14) years.  
242 When any ward, who is not a resident of the state, owns property,  
243 real or personal, in this state, the chancery court of the county  
244 in which the property may be, may appoint a general guardian for  
245 such ward who shall be the general guardian of his estate only.  
246 If the ward be a minor over fourteen (14) years of age and under  
247 no legal disability except minority, the selection of guardian may  
248 be made before a clerk of a court of record of the state or county  
249 of his residence, and a certificate of such clerk, under his seal  
250 of office, shall be received as evidence of the selection.

251 **SECTION 4.** Section 93-17-3, Mississippi Code of 1972, is  
252 amended as follows:

253 93-17-3. (1) Any person may be adopted in accordance with  
254 the provisions of this chapter in term time or in vacation by an  
255 unmarried adult or by a married person whose spouse joins in the

256 petition, provided that the petitioner or petitioners have resided  
257 in this state for ninety (90) days preceding the filing of the  
258 petition. However, if the petitioner or petitioners, or one (1)  
259 of them, are related to the child within the third degree  
260 according to civil law, or if the adoption is presented to the  
261 court by an adoption agency licensed by the State of Mississippi,  
262 the residence restriction shall not apply. Grandparents shall be  
263 given priority in adoptions. The adoption shall be by sworn  
264 petition filed in the chancery court of the county in which the  
265 adopting petitioner or petitioners reside or in which the child to  
266 be adopted resides or was born, or was found when it was abandoned  
267 or deserted, or in which the home is located to which the child  
268 has been surrendered by a person authorized to so do. The  
269 petition shall be accompanied by a doctor's or nurse  
270 practitioner's certificate showing the physical and mental  
271 condition of the child to be adopted and a sworn statement of all  
272 property, if any, owned by the child. If the doctor's or nurse  
273 practitioner's certificate indicates any abnormal mental or  
274 physical condition or defect, the condition or defect shall not in  
275 the discretion of the chancellor bar the adoption of the child if  
276 the adopting parent or parents file an affidavit stating full and  
277 complete knowledge of the condition or defect and stating a desire  
278 to adopt the child, notwithstanding the condition or defect. The  
279 court shall have the power to change the name of the child as a  
280 part of the adoption proceedings. The word "child" herein shall  
281 be construed to refer to the person to be adopted, though an  
282 adult.

283 (2) Adoption by couples of the same gender is prohibited.

284 **SECTION 5.** Section 93-16-3, Mississippi Code of 1972, is  
285 brought forward as follows:

286 93-16-3. (1) Whenever a court of this state enters a decree  
287 or order awarding custody of a minor child to one (1) of the  
288 parents of the child or terminating the parental rights of one (1)

289 of the parents of a minor child, or whenever one (1) of the  
290 parents of a minor child dies, either parent of the child's  
291 parents who was not awarded custody or whose parental rights have  
292 been terminated or who has died may petition the court in which  
293 the decree or order was rendered or, in the case of the death of a  
294 parent, petition the chancery court in the county in which the  
295 child resides, and seek visitation rights with such child.

296 (2) Any grandparent who is not authorized to petition for  
297 visitation rights pursuant to subsection (1) of this section may  
298 petition the chancery court and seek visitation rights with his or  
299 her grandchild, and the court may grant visitation rights to the  
300 grandparent, provided the court finds:

301 (a) That the grandparent of the child had established a  
302 viable relationship with the child and the parent or custodian of  
303 the child unreasonably denied the grandparent visitation rights  
304 with the child; and

305 (b) That visitation rights of the grandparent with the  
306 child would be in the best interests of the child.

307 (3) For purposes of subsection (3) of this section, the term  
308 "viable relationship" means a relationship in which the  
309 grandparents or either of them have voluntarily and in good faith  
310 supported the child financially in whole or in part for a period  
311 of not less than six (6) months before filing any petition for  
312 visitation rights with the child or the grandparents have had  
313 frequent visitation including occasional overnight visitation with  
314 said child for a period of not less than one (1) year.

315 (4) Any petition for visitation rights under subsection (2)  
316 of this section shall be filed in the county where an order of  
317 custody as to such child has previously been entered. If no such  
318 custody order has been entered, then the grandparents' petition  
319 shall be filed in the county where the child resides or may be  
320 found. The court shall on motion of the parent or parents direct  
321 the grandparents to pay reasonable attorney's fees to the parent

322 or parents in advance and prior to any hearing, except in cases in  
323 which the court finds that no financial hardship will be imposed  
324 upon the parents. The court may also direct the grandparents to  
325 pay reasonable attorney's fees to the parent or parents of the  
326 child and court costs regardless of the outcome of the petition.

327       **SECTION 6.** This act shall take effect and be in force from  
328 and after July 1, 2006.