

By: Representative Gunn

To: Judiciary A

HOUSE BILL NO. 932

1 AN ACT TO AMEND SECTIONS 93-5-2 AND 93-5-23, MISSISSIPPI CODE
2 OF 1972, TO CLARIFY PROPERTY AND ASSETS OF A SPOUSE FOR
3 MAINTENANCE AND ALIMONY PURPOSES; AND FOR RELATED PURPOSES.

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

5 **SECTION 1.** Section 93-5-2, Mississippi Code of 1972, is
6 amended as follows:

7 93-5-2. (1) Divorce from the bonds of matrimony may be
8 granted on the ground of irreconcilable differences, but only upon
9 the joint complaint of the husband and wife or a complaint where
10 the defendant has been personally served with process or where the
11 defendant has entered an appearance by written waiver of process.

12 (2) If the parties provide by written agreement for the
13 custody and maintenance of any children of that marriage and for
14 the settlement of any property rights between the parties and the
15 court finds that such provisions are adequate and sufficient, the
16 agreement may be incorporated in the judgment, and such judgment
17 may be modified as other judgments for divorce.

18 (3) If the parties are unable to agree upon adequate and
19 sufficient provisions for the custody and maintenance of any
20 children of that marriage or any property rights between them,
21 they may consent to a divorce on the ground of irreconcilable
22 differences and permit the court to decide the issues upon which
23 they cannot agree. Such consent must be in writing, signed by
24 both parties personally, must state that the parties voluntarily
25 consent to permit the court to decide such issues, which shall be
26 specifically set forth in such consent, and that the parties
27 understand that the decision of the court shall be a binding and

28 lawful judgment. Such consent may not be withdrawn by a party
29 without leave of the court after the court has commenced any
30 proceeding, including the hearing of any motion or other matter
31 pertaining thereto. The failure or refusal of either party to
32 agree as to adequate and sufficient provisions for the custody and
33 maintenance of any children of that marriage or any property
34 rights between the parties, or any portion of such issues, or the
35 failure or refusal of any party to consent to permit the court to
36 decide such issues, shall not be used as evidence, or in any
37 manner, against such party. No divorce shall be granted pursuant
38 to this subsection until all matters involving custody and
39 maintenance of any child of that marriage and property rights
40 between the parties raised by the pleadings have been either
41 adjudicated by the court or agreed upon by the parties and found
42 to be adequate and sufficient by the court and included in the
43 judgment of divorce. Appeals from any orders and judgments
44 rendered pursuant to this subsection may be had as in other cases
45 in chancery court only insofar as such orders and judgments relate
46 to issues that the parties consented to have decided by the court.

47 (4) Complaints for divorce on the ground of irreconcilable
48 differences must have been on file for sixty (60) days before
49 being heard. Except as otherwise provided in subsection (3) of
50 this section, a joint complaint of husband and wife or a complaint
51 where the defendant has been personally served with process or
52 where the defendant has entered an appearance by written waiver of
53 process, for divorce solely on the ground of irreconcilable
54 differences, shall be taken as proved and a final judgment entered
55 thereon, as in other cases and without proof or testimony in
56 termtime or vacation, the provisions of Section 93-5-17 to the
57 contrary notwithstanding.

58 (5) Except as otherwise provided in subsection (3) of this
59 section, no divorce shall be granted on the ground of
60 irreconcilable differences where there has been a contest or

61 denial; provided, however, that a divorce may be granted on the
62 grounds of irreconcilable differences where there has been a
63 contest or denial, if the contest or denial has been withdrawn or
64 cancelled by the party filing same by leave and order of the
65 court.

66 (6) Irreconcilable differences may be asserted as a sole
67 ground for divorce or as an alternate ground for divorce with any
68 other cause for divorce set out in Section 93-5-1.

69 (7) For the purposes of orders touching the maintenance and
70 alimony of the wife or husband, "property" and "an asset of a
71 spouse" shall not include any interest a party may have as an heir
72 at law of a living person or any interest under any donative
73 third-party instrument which is amendable or revocable including,
74 but not limited to, third-party wills, revocable trusts, life
75 insurance and retirement benefits instruments, nor shall any such
76 interests be considered as an economic circumstance or other
77 factor.

78 **SECTION 2.** Section 93-5-23, Mississippi Code of 1972, is
79 amended as follows:

80 93-5-23. When a divorce shall be decreed from the bonds of
81 matrimony, the court may, in its discretion, having regard to the
82 circumstances of the parties and the nature of the case, as may
83 seem equitable and just, make all orders touching the care,
84 custody and maintenance of the children of the marriage, and also
85 touching the maintenance and alimony of the wife or the husband,
86 or any allowance to be made to her or him, and shall, if need be,
87 require bond, sureties or other guarantee for the payment of the
88 sum so allowed. Orders touching on the custody of the children of
89 the marriage shall be made in accordance with the provisions of
90 Section 93-5-24. For the purposes of orders touching the
91 maintenance and alimony of the wife or husband, "property" and "an
92 asset of a spouse" shall not include any interest a party may have
93 as an heir at law of a living person or any interest under any

94 donative third-party instrument which is amendable or revocable
95 including, but not limited to, third-party wills, revocable
96 trusts, life insurance and retirement benefit instruments, nor
97 shall any such interests be considered as an economic circumstance
98 or other factor. The court may afterwards, on petition, change
99 the decree, and make from time to time such new decrees as the
100 case may require. However, where proof shows that both parents
101 have separate incomes or estates, the court may require that each
102 parent contribute to the support and maintenance of the children
103 of the marriage in proportion to the relative financial ability of
104 each. In the event a legally responsible parent has health
105 insurance available to him or her through an employer or
106 organization that may extend benefits to the dependents of such
107 parent, any order of support issued against such parent may
108 require him or her to exercise the option of additional coverage
109 in favor of such children as he or she is legally responsible to
110 support.

111 Whenever the court has ordered a party to make periodic
112 payments for the maintenance or support of a child, but no bond,
113 sureties or other guarantee has been required to secure such
114 payments, and whenever such payments as have become due remain
115 unpaid for a period of at least thirty (30) days, the court may,
116 upon petition of the person to whom such payments are owing, or
117 such person's legal representative, enter an order requiring that
118 bond, sureties or other security be given by the person obligated
119 to make such payments, the amount and sufficiency of which shall
120 be approved by the court. The obligor shall, as in other civil
121 actions, be served with process and shall be entitled to a hearing
122 in such case.

123 Whenever in any proceeding in the chancery court concerning
124 the custody of a child a party alleges that the child whose
125 custody is at issue has been the victim of sexual or physical
126 abuse by the other party, the court may, on its own motion, grant

127 a continuance in the custody proceeding only until such allegation
128 has been investigated by the Department of Human Services. At the
129 time of ordering such continuance, the court may direct the party
130 and his attorney making such allegation of child abuse to report
131 in writing and provide all evidence touching on the allegation of
132 abuse to the Department of Human Services. The Department of
133 Human Services shall investigate such allegation and take such
134 action as it deems appropriate and as provided in such cases under
135 the Youth Court Law (being Chapter 21 of Title 43, Mississippi
136 Code of 1972) or under the laws establishing family courts (being
137 Chapter 23 of Title 43, Mississippi Code of 1972).

138 If after investigation by the Department of Human Services or
139 final disposition by the youth court or family court allegations
140 of child abuse are found to be without foundation, the chancery
141 court shall order the alleging party to pay all court costs and
142 reasonable attorney's fees incurred by the defending party in
143 responding to such allegation.

144 The court may investigate, hear and make a determination in a
145 custody action when a charge of abuse and/or neglect arises in the
146 course of a custody action as provided in Section 43-21-151, and
147 in such cases the court shall appoint a guardian ad litem for the
148 child as provided under Section 43-21-121, who shall be an
149 attorney. Unless the chancery court's jurisdiction has been
150 terminated, all disposition orders in such cases for placement
151 with the Department of Human Services shall be reviewed by the
152 court or designated authority at least annually to determine if
153 continued placement with the department is in the best interest of
154 the child or public.

155 The duty of support of a child terminates upon the
156 emancipation of the child. The court may determine that
157 emancipation has occurred pursuant to Section 93-11-65.

158 **SECTION 3.** This act shall take effect and be in force from
159 and after July 1, 2007.