

By: Senator(s) Massey, Tindell

To: Judiciary, Division A

SENATE BILL NO. 2090

1 AN ACT TO CREATE NEW SECTION 93-5-35, MISSISSIPPI CODE OF
2 1972, TO PROVIDE A MEANS FOR A COURT TO GRANT THIRD-PARTY
3 VISITATION TO A PERSON STANDING IN LOCO PARENTIS TO A CHILD OR TO
4 ANOTHER PERSON WITH A SIGNIFICANT RELATIONSHIP WITH THE CHILD
5 UNDER CERTAIN LIMITED CIRCUMSTANCES; AND FOR RELATED PURPOSES.

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

7 **SECTION 1.** The following shall be codified as Section
8 93-5-35, Mississippi Code of 1972:

9 93-5-35. **Custody award to person standing in loco parentis**
10 **or having other significant relationship to child.** (1) A person
11 other than a legal parent may petition the court having
12 jurisdiction for visitation with a child. The court may grant
13 visitation rights during the child's minority on a finding that
14 the visitation is in the child's best interests and that any of
15 the following is true:

16 (a) One (1) of the legal parents is deceased or has
17 been missing at least three (3) months. A parent is considered to
18 be missing if the parent's location has not been determined and



19 the parent has been reported as missing to a law enforcement
20 agency.

21 (b) The child was born out of wedlock and the child's
22 legal parents are not married to each other at the time the
23 petition is filed.

24 (c) For in loco parentis visitation, a proceeding for
25 dissolution of marriage of the legal parents or for separate
26 maintenance is pending at the time the petition is filed.

27 (d) The court determines that an ongoing personal
28 parent-child relationship exists. "Parent-child relationship"
29 means that the person resided in the same household as the child
30 or otherwise made available to the child food, clothing, shelter
31 and incidental necessities and provided the child with necessary
32 care, education, discipline, interaction, or companionship,
33 fulfilling the child's psychological needs for a parent as well as
34 the child's physical needs, but does not include the relationship
35 between a child and a person who is the nonrelated foster parent
36 of the child unless the relationship continued over a period
37 exceeding eighteen (18) months.

38 (2) A petition filed under this section must be verified or
39 supported by affidavit and must include detailed facts supporting
40 the petitioner's claim. The petitioner must also provide notice
41 of this proceeding, including a copy of the petition and any
42 affidavits or other attachments, and serve the notice pursuant to



43 the Mississippi Rules of Civil Procedure to all of the following
44 parties who exist:

45 (a) The child's legal parents.

46 (b) A third party who possesses legal decision-making
47 authority over the child or visitation rights.

48 (c) The child's guardian or guardian ad litem.

49 (d) A person or agency possessing physical custody of
50 the child or claiming legal decision-making authority or
51 visitation rights concerning the child.

52 (e) Any other person or agency that has previously
53 appeared in the action.

54 (3) In deciding whether to grant visitation to a third
55 party, the court shall give special weight to the legal parents'
56 opinion of what serves their child's best interests and consider
57 all relevant factors including:

58 (a) The historical relationship, if any, between the
59 child and the person seeking visitation.

60 (b) The motivation of the requesting party seeking
61 visitation.

62 (c) The motivation of the person objecting to
63 visitation.

64 (d) The quantity of visitation time requested and the
65 potential adverse impact that visitation will have on the child's
66 customary activities.



67 (e) If one or both of the child's parents are deceased,
68 the benefit in maintaining an extended family relationship.

69 (4) This section will not apply to a petition for visitation
70 if the chapter on grandparents' visitation rights found at Title
71 93, Chapter 16, Mississippi Code of 1972, applies.

72 (5) Unless the child is adopted by the spouse of a natural
73 parent after the natural parent remarries, all visitation rights
74 granted under this section automatically terminate if the child is
75 adopted or placed for adoption. If the child is removed from an
76 adoptive placement, the court may reinstate the visitation rights.

77 (6) The court may not grant visitation rights under this
78 section to a person who has been convicted of the intentional
79 homicide of a parent of the child unless:

80 (a) The conviction has been reversed, set aside or
81 vacated; or

82 (b) The court determines by clear and convincing
83 evidence that the visitation would be in the best interests of the
84 child.

85 (7) In any proceeding under this section, there is a
86 presumption that the legal parent acts in the best interest of the
87 child. In deciding whether the presumption has been rebutted and
88 whether to award visitation or contact rights over the objection
89 of the legal parent, the court may consider factors, including,
90 but not limited to, the following:



91 (a) The petitioner is or recently has been the child's
92 primary caretaker;

93 (b) Circumstances detrimental to the child exist if
94 relief is denied;

95 (c) The legal parent has fostered, encouraged or
96 consented to the relationship between the child and the
97 petitioner;

98 (d) Granting relief would not substantially interfere
99 with the custodial relationship; or

100 (e) The legal parent has unreasonably denied or limited
101 or threatened to deny or limit contact between the child and the
102 petitioner.

103 **SECTION 2.** This act shall take effect and be in force from
104 and after July 1, 2015.

