

By: Senator(s) Chassaniol

To: Judiciary, Division A

## SENATE BILL NO. 2765

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 more than eighteen  
37 (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



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

- (a) The child's legal parents.
- (b) A third party who possesses legal decision-making authority over the child or visitation rights.
- (c) The child's guardian or guardian ad litem.
- (d) A person or agency possessing physical custody of the child or claiming legal decision-making authority or visitation rights concerning the child.
- (e) Any other person or agency that has previously appeared in the action.

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

- (a) The historical relationship, if any, between the child and the person seeking visitation.
- (b) The motivation of the requesting party seeking visitation.
- (c) The motivation of the person objecting to visitation.
- (d) The quantity of visitation time requested and the potential adverse impact that visitation will have on the child's 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, 2018.

