

By: Representative Yates

To: Judiciary A

HOUSE BILL NO. 1388

1 AN ACT TO BRING FORWARD SECTIONS 93-5-1 THROUGH 93-5-34,
2 MISSISSIPPI CODE OF 1972, WHICH GOVERN DIVORCE AND ALIMONY IN THE
3 STATE OF MISSISSIPPI, FOR PURPOSES OF AMENDMENT; AND FOR RELATED
4 PURPOSES.

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

6 **SECTION 1.** Section 93-5-1, Mississippi Code of 1972, is
7 brought forward as follows:

8 93-5-1. Divorces from the bonds of matrimony may be decreed
9 to the injured party for any one or more of the following twelve
10 (12) causes:

11 First. Natural impotency.

12 Second. Adultery, unless it should appear that it was
13 committed by collusion of the parties for the purpose of procuring
14 a divorce, or unless the parties cohabited after a knowledge by
15 complainant of the adultery.

16 Third. Being sentenced to any penitentiary, and not pardoned
17 before being sent there.

18 Fourth. Willful, continued and obstinate desertion for the
19 space of one (1) year.



20 Fifth. Habitual drunkenness.

21 Sixth. Habitual and excessive use of opium, morphine or
22 other like drug.

23 Seventh. Habitual cruel and inhuman treatment, including
24 spousal domestic abuse.

25 Spousal domestic abuse may be established through the
26 reliable testimony of a single credible witness, who may be the
27 injured party, and includes, but is not limited to:

28 That the injured party's spouse attempted to cause, or
29 purposely, knowingly or recklessly caused bodily injury to the
30 injured party, or that the injured party's spouse attempted by
31 physical menace to put the injured party in fear of imminent
32 serious bodily harm; or

33 That the injured party's spouse engaged in a pattern of
34 behavior against the injured party of threats or intimidation,
35 emotional or verbal abuse, forced isolation, sexual extortion or
36 sexual abuse, or stalking or aggravated stalking as defined in
37 Section 97-3-107, if the pattern of behavior rises above the level
38 of unkindness or rudeness or incompatibility or want of affection.

39 Eighth. Having mental illness or an intellectual disability
40 at the time of marriage, if the party complaining did not know of
41 that infirmity.

42 Ninth. Marriage to some other person at the time of the
43 pretended marriage between the parties.



44 Tenth. Pregnancy of the wife by another person at the time
45 of the marriage, if the husband did not know of the pregnancy.

46 Eleventh. Either party may have a divorce if they are
47 related to each other within the degrees of kindred between whom
48 marriage is prohibited by law.

49 Twelfth. Incurable mental illness. However, no divorce
50 shall be granted upon this ground unless the party with mental
51 illness has been under regular treatment for mental illness and
52 causes thereof, confined in an institution for persons with mental
53 illness for a period of at least three (3) years immediately
54 preceding the commencement of the action. However, transfer of a
55 party with mental illness to his or her home for treatment or a
56 trial visit on prescription or recommendation of a licensed
57 physician, which treatment or trial visit proves unsuccessful
58 after a bona fide effort by the complaining party to effect a
59 cure, upon the reconfinement of the party with mental illness in
60 an institution for persons with mental illness, shall be regular
61 treatment for mental illness and causes thereof, and the period of
62 time so consumed in seeking to effect a cure or while on a trial
63 visit home shall be added to the period of actual confinement in
64 an institution for persons with mental illness in computing the
65 required period of three (3) years confinement immediately
66 preceding the beginning of the action. No divorce shall be
67 granted because of mental illness until after a thorough
68 examination of the person with mental illness by two (2)



69 physicians who are recognized authorities on mental diseases. One
70 (1) of those physicians shall be either the superintendent of a
71 state psychiatric hospital or institution or a veterans hospital
72 for persons with mental illness in which the patient is confined,
73 or a member of the medical staff of that hospital or institution
74 who has had the patient in charge. Before incurable mental
75 illness can be successfully proven as a ground for divorce, it
76 shall be necessary that both of those physicians make affidavit
77 that the patient is a person with mental illness at the time of
78 the examination, and both affidavits shall be made a part of the
79 permanent record of the divorce proceedings and shall create the
80 prima facie presumption of incurable mental illness, such as would
81 justify a divorce based on that ground. Service of process shall
82 be made on the superintendent of the hospital or institution in
83 which the defendant is a patient. If the patient is in a hospital
84 or institution outside the state, process shall be served by
85 publication, as in other cases of service by publication, together
86 with the sending of a copy by registered mail to the
87 superintendent of the hospital or institution. In addition,
88 process shall be served upon the next blood relative and guardian,
89 if any. If there is no legal guardian, the court shall appoint a
90 guardian ad litem to represent the interest of the person with
91 mental illness. The relative or guardian and superintendent of
92 the hospital or institution shall be entitled to appear and be
93 heard upon any and all issues. The status of the parties as to



94 the support and maintenance of the person with mental illness
95 shall not be altered in any way by the granting of the divorce.

96 However, in the discretion of the chancery court, and in
97 those cases as the court may deem it necessary and proper, before
98 any such decree is granted on the ground of incurable mental
99 illness, the complainant, when ordered by the court, shall enter
100 into bond, to be approved by the court, in such an amount as the
101 court may think just and proper, conditioned for the care and
102 keeping of the person with mental illness during the remainder of
103 his or her natural life, unless the person with mental illness has
104 a sufficient estate in his or her own right for that purpose.

105 **SECTION 2.** Section 93-5-2, Mississippi Code of 1972, is
106 brought forward as follows:

107 93-5-2. (1) Divorce from the bonds of matrimony may be
108 granted on the ground of irreconcilable differences, but only upon
109 the joint complaint of the husband and wife or a complaint where
110 the defendant has been personally served with process or where the
111 defendant has entered an appearance by written waiver of process.

112 (2) If the parties provide by written agreement for the
113 custody and maintenance of any children of that marriage and for
114 the settlement of any property rights between the parties and the
115 court finds that such provisions are adequate and sufficient, the
116 agreement may be incorporated in the judgment, and such judgment
117 may be modified as other judgments for divorce.



118 (3) If the parties are unable to agree upon adequate and
119 sufficient provisions for the custody and maintenance of any
120 children of that marriage or any property rights between them,
121 they may consent to a divorce on the ground of irreconcilable
122 differences and permit the court to decide the issues upon which
123 they cannot agree. Such consent must be in writing, signed by
124 both parties personally, must state that the parties voluntarily
125 consent to permit the court to decide such issues, which shall be
126 specifically set forth in such consent, and that the parties
127 understand that the decision of the court shall be a binding and
128 lawful judgment. Such consent may not be withdrawn by a party
129 without leave of the court after the court has commenced any
130 proceeding, including the hearing of any motion or other matter
131 pertaining thereto. The failure or refusal of either party to
132 agree as to adequate and sufficient provisions for the custody and
133 maintenance of any children of that marriage or any property
134 rights between the parties, or any portion of such issues, or the
135 failure or refusal of any party to consent to permit the court to
136 decide such issues, shall not be used as evidence, or in any
137 manner, against such party. No divorce shall be granted pursuant
138 to this subsection until all matters involving custody and
139 maintenance of any child of that marriage and property rights
140 between the parties raised by the pleadings have been either
141 adjudicated by the court or agreed upon by the parties and found
142 to be adequate and sufficient by the court and included in the



143 judgment of divorce. Appeals from any orders and judgments
144 rendered pursuant to this subsection may be had as in other cases
145 in chancery court only insofar as such orders and judgments relate
146 to issues that the parties consented to have decided by the court.

147 (4) Complaints for divorce on the ground of irreconcilable
148 differences must have been on file for sixty (60) days before
149 being heard. Except as otherwise provided in subsection (3) of
150 this section, a joint complaint of husband and wife or a complaint
151 where the defendant has been personally served with process or
152 where the defendant has entered an appearance by written waiver of
153 process, for divorce solely on the ground of irreconcilable
154 differences, shall be taken as proved and a final judgment entered
155 thereon, as in other cases and without proof or testimony in
156 termtime or vacation, the provisions of Section 93-5-17 to the
157 contrary notwithstanding.

158 (5) Except as otherwise provided in subsection (3) of this
159 section, no divorce shall be granted on the ground of
160 irreconcilable differences where there has been a contest or
161 denial; provided, however, that a divorce may be granted on the
162 ground of irreconcilable differences where there has been a
163 contest or denial, if the contest or denial has been withdrawn or
164 cancelled by the party filing same by leave and order of the
165 court.



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

169 (7) For the purposes of orders touching the maintenance and
170 alimony of the wife or husband, "property" and "an asset of a
171 spouse" shall not include any interest a party may have as an heir
172 at law of a living person or any interest under a third-party
173 will, nor shall any such interest be considered as an economic
174 circumstance or other factor.

175 **SECTION 3.** Section 93-5-3, Mississippi Code of 1972, is
176 brought forward as follows:

177 93-5-3. If a complainant or cross-complainant in a divorce
178 action shall prove grounds entitling him to a divorce, it shall
179 not be mandatory on any chancellor to deny such party a divorce,
180 even though the evidence might establish recrimination on the part
181 of such complainant or cross-complainant.

182 **SECTION 4.** Section 93-5-4, Mississippi Code of 1972, is
183 brought forward as follows:

184 93-5-4. It shall be no impediment to a divorce that the
185 offended spouse did not leave the marital domicile or separate
186 from the offending spouse on account of the conduct of the
187 offending spouse.

188 **SECTION 5.** Section 93-5-5, Mississippi Code of 1972, is
189 brought forward as follows:



190 93-5-5. The jurisdiction of the chancery court in suits for
191 divorce shall be confined to the following cases:

192 (a) Where one (1) of the parties has been an actual
193 bona fide resident within this state for six (6) months next
194 preceding the commencement of the suit. If a member of the Armed
195 Services of the United States is stationed in the state and
196 residing within the state with his spouse, such person and his
197 spouse shall be considered actual bona fide residents of the state
198 for the purposes of this section, provided they were residing
199 within the state at the time of the separation of the parties.

200 (b) In any case where the proof shows that a residence
201 was acquired in this state with a purpose of securing a divorce,
202 the court shall not take jurisdiction thereof, but dismiss the
203 bill at the cost of complainant.

204 **SECTION 6.** Section 93-5-7, Mississippi Code of 1972, is
205 brought forward as follows:

206 93-5-7. The proceedings to obtain a divorce shall be by
207 complaint in chancery, and shall be conducted as other suits in
208 chancery, except that (1) the defendant shall not be required to
209 answer on oath; (2) no judgment by default may be granted but a
210 divorce may be granted on the ground of irreconcilable differences
211 in termtime or vacation; (3) admissions made in the answer shall
212 not be taken as evidence; (4) the clerk shall not set down on the
213 issue docket any divorce case unless upon the request of one (1)
214 of the parties; (5) the plaintiff may allege only the statutory



215 language as cause for divorce in a separate paragraph in the
216 complaint; provided, however, the defendant shall be entitled to
217 discover any matter, not privileged, which is relevant to the
218 issues raised by the claims or defenses of the other; (6) the
219 court shall have full power in its discretion to grant
220 continuances in such cases without the compliance by the parties
221 with any of the requirements of law respecting continuances in
222 other cases; and (7) in all cases, except complaints seeking a
223 divorce on the ground of irreconcilable differences, the complaint
224 must be accompanied with an affidavit of plaintiff that it is not
225 filed by collusion with the defendant for the purpose of obtaining
226 a divorce, but that the cause or causes for divorce stated in the
227 complaint are true as stated.

228 **SECTION 7.** Section 93-5-9, Mississippi Code of 1972, is
229 brought forward as follows:

230 93-5-9. A married minor may bring or defend a suit for
231 divorce, separate maintenance and support, temporary maintenance
232 or support, custody of children, or any other action involving
233 marital rights without the necessity of a next friend or guardian
234 ad litem, and a judgment in such cases shall be as effective as if
235 the minor were an adult.

236 **SECTION 8.** Section 93-5-11, Mississippi Code of 1972, is
237 brought forward as follows:

238 93-5-11. All complaints, except those based solely on the
239 ground of irreconcilable differences, must be filed in the county



240 in which the plaintiff resides, if the defendant be a nonresident
241 of this state, or be absent, so that process cannot be served; and
242 the manner of making such parties defendants so as to authorize a
243 judgment against them in other chancery cases, shall be observed.
244 If the defendant be a resident of this state, the complaint shall
245 be filed in the county in which such defendant resides or may be
246 found at the time, or in the county of the residence of the
247 parties at the time of separation, if the plaintiff be still a
248 resident of such county when the suit is instituted.

249 A complaint for divorce based solely on the grounds of
250 irreconcilable differences shall be filed in the county of
251 residence of either party where both parties are residents of this
252 state. If one (1) party is not a resident of this state, then the
253 complaint shall be filed in the county where the resident party
254 resides.

255 Transfer of venue shall be governed by Rule 82(d) of the
256 Mississippi Rules of Civil Procedure.

257 **SECTION 9.** Section 93-5-13, Mississippi Code of 1972, is
258 brought forward as follows:

259 93-5-13. If the defendant is an infant or a person with
260 mental illness, the court may appoint a guardian ad litem for the
261 defendant.

262 **SECTION 10.** Section 93-5-15, Mississippi Code of 1972, is
263 brought forward as follows:



264 93-5-15. From and after March 15, 1934, any marital contract
265 previously or hereafter solemnized by and under which parties have
266 been duly and legally married, and one (1) of the parties to the
267 marriage contract has become or becomes mentally ill to such an
268 extent that it is necessary for a guardian to be appointed for
269 that party, and the other party to the marital contract has
270 committed any act that constitutes ground for divorce under the
271 present laws, the guardian for the party with mental illness to
272 the contract of marriage shall have the right to file a bill as
273 the guardian, in the name of his ward, for the dissolution of the
274 marriage, in the same way and manner and at the same place and on
275 the same process that the person with mental illness could have
276 done, if he had not become mentally ill.

277 **SECTION 11.** Section 93-5-17, Mississippi Code of 1972, is
278 brought forward as follows:

279 93-5-17. (1) The proceedings to obtain a divorce shall not
280 be heard or considered nor a judgment of divorce entered except in
281 open court. A chancellor may, in his discretion, hear or consider
282 proceedings to obtain a divorce in vacation and make and enter
283 judgments of divorce in the same manner as he may in other cases
284 that may be heard in vacation pursuant to Section 9-5-91. Any
285 judgment made or entered contrary to the provisions of this
286 section shall be null and void.

287 (2) The chancellor in vacation may, upon reasonable notice,
288 hear complaints for temporary alimony, temporary custody of



289 children and temporary child support and make all proper orders
290 and judgments thereon.

291 (3) As used in this section, the term "chancellor in
292 vacation" shall include any chancellor who is holding court at any
293 location in any county in his district.

294 **SECTION 12.** Section 93-5-19, Mississippi Code of 1972, is
295 brought forward as follows:

296 93-5-19. In the trial of suits for divorce, witnesses may be
297 summoned, and examined in open court, as in the trial of issues of
298 fact in the circuit court, or depositions may be taken and read as
299 in other cases and the parties shall be competent witnesses for or
300 against each other.

301 **SECTION 13.** Section 93-5-21, Mississippi Code of 1972, is
302 brought forward as follows:

303 93-5-21. The court may, in its discretion, exclude all
304 persons from the court room during the trial except the officers
305 of the court, attorneys engaged in the case, parties to the suit
306 and the witness being examined.

307 **SECTION 14.** Section 93-5-23, Mississippi Code of 1972, is
308 brought forward as follows:

309 93-5-23. When a divorce shall be decreed from the bonds of
310 matrimony, the court may, in its discretion, having regard to the
311 circumstances of the parties and the nature of the case, as may
312 seem equitable and just, make all orders touching the care,
313 custody and maintenance of the children of the marriage, and also



314 touching the maintenance and alimony of the wife or the husband,
315 or any allowance to be made to her or him, and shall, if need be,
316 require bond, sureties or other guarantee for the payment of the
317 sum so allowed. Orders touching on the custody of the children of
318 the marriage shall be made in accordance with the provisions of
319 Section 93-5-24. For the purposes of orders touching the
320 maintenance and alimony of the wife or husband, "property" and "an
321 asset of a spouse" shall not include any interest a party may have
322 as an heir at law of a living person or any interest under a
323 third-party will, nor shall any such interest be considered as an
324 economic circumstance or other factor. The court may afterwards,
325 on petition, change the decree, and make from time to time such
326 new decrees as the case may require. However, where proof shows
327 that both parents have separate incomes or estates, the court may
328 require that each parent contribute to the support and maintenance
329 of the children of the marriage in proportion to the relative
330 financial ability of each. In the event a legally responsible
331 parent has health insurance available to him or her through an
332 employer or organization that may extend benefits to the
333 dependents of such parent, any order of support issued against
334 such parent may require him or her to exercise the option of
335 additional coverage in favor of such children as he or she is
336 legally responsible to support.

337 Whenever the court has ordered a party to make periodic
338 payments for the maintenance or support of a child, but no bond,



339 sureties or other guarantee has been required to secure such
340 payments, and whenever such payments as have become due remain
341 unpaid for a period of at least thirty (30) days, the court may,
342 upon petition of the person to whom such payments are owing, or
343 such person's legal representative, enter an order requiring that
344 bond, sureties or other security be given by the person obligated
345 to make such payments, the amount and sufficiency of which shall
346 be approved by the court. The obligor shall, as in other civil
347 actions, be served with process and shall be entitled to a hearing
348 in such case.

349 At the discretion of the court, any person found in contempt
350 for failure to pay child support and imprisoned therefor may be
351 referred for placement in a state, county or municipal
352 restitution, house arrest or restorative justice center or
353 program, provided such person meets the qualifications prescribed
354 in Section 99-37-19.

355 Whenever in any proceeding in the chancery court concerning
356 the custody of a child a party alleges that the child whose
357 custody is at issue has been the victim of sexual or physical
358 abuse by the other party, the court may, on its own motion, grant
359 a continuance in the custody proceeding only until such allegation
360 has been investigated by the Department of Child Protection
361 Services. At the time of ordering such continuance, the court may
362 direct the party and his attorney making such allegation of child
363 abuse to report in writing and provide all evidence touching on



364 the allegation of abuse to the Department of Child Protection
365 Services. The Department of Child Protection Services shall
366 investigate such allegation and take such action as it deems
367 appropriate and as provided in such cases under the Youth Court
368 Law (being Chapter 21 of Title 43, Mississippi Code of 1972) or
369 under the laws establishing family courts (being Chapter 23 of
370 Title 43, Mississippi Code of 1972).

371 If after investigation by the Department of Child Protection
372 Services or final disposition by the youth court or family court
373 allegations of child abuse are found to be without foundation, the
374 chancery court shall order the alleging party to pay all court
375 costs and reasonable attorney's fees incurred by the defending
376 party in responding to such allegation.

377 The court may investigate, hear and make a determination in a
378 custody action when a charge of abuse and/or neglect arises in the
379 course of a custody action as provided in Section 43-21-151, and
380 in such cases the court shall appoint a guardian ad litem for the
381 child as provided under Section 43-21-121, who shall be an
382 attorney. Unless the chancery court's jurisdiction has been
383 terminated, all disposition orders in such cases for placement
384 with the Department of Child Protection Services shall be reviewed
385 by the court or designated authority at least annually to
386 determine if continued placement with the department is in the
387 best interest of the child or public.



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

391 Custody and visitation upon military temporary duty,
392 deployment or mobilization shall be governed by Section 93-5-34.

393 **SECTION 15.** Section 93-5-24, Mississippi Code of 1972, is
394 brought forward as follows:

395 93-5-24. (1) Custody shall be awarded as follows according
396 to the best interests of the child:

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

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

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

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

404 (e) Upon a finding by the court that both of the
405 parents of the child have abandoned or deserted such child or that
406 both such parents are mentally, morally or otherwise unfit to rear
407 and train the child the court may award physical and legal custody
408 to:

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



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

414 In making an order for custody to either parent or to both
415 parents jointly, the court, in its discretion, may require the
416 parents to submit to the court a plan for the implementation of
417 the custody order.

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

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

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

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

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

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



436 (d) For the purposes of this section, "legal custody"
437 means the decision-making rights, the responsibilities and the
438 authority relating to the health, education and welfare of a
439 child.

440 (e) For the purposes of this section, "joint legal
441 custody" means that the parents or parties share the
442 decision-making rights, the responsibilities and the authority
443 relating to the health, education and welfare of a child. An
444 award of joint legal custody obligates the parties to exchange
445 information concerning the health, education and welfare of the
446 minor child, and to confer with one another in the exercise of
447 decision-making rights, responsibilities and authority.

448 An award of joint physical and legal custody obligates the
449 parties to exchange information concerning the health, education
450 and welfare of the minor child, and unless allocated, apportioned
451 or decreed, the parents or parties shall confer with one another
452 in the exercise of decision-making rights, responsibilities and
453 authority.

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

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



461 (8) Notwithstanding any other provision of law, access to
462 records and information pertaining to a minor child, including,
463 but not limited to, medical, dental and school records, shall not
464 be denied to a parent because the parent is not the child's
465 custodial parent.

466 (9) (a) (i) In every proceeding where the custody of a
467 child is in dispute, there shall be a rebuttable presumption that
468 it is detrimental to the child and not in the best interest of the
469 child to be placed in sole custody, joint legal custody or joint
470 physical custody of a parent who has a history of perpetrating
471 family violence. The court may find a history of perpetrating
472 family violence if the court finds, by a preponderance of the
473 evidence, one (1) incident of family violence that has resulted in
474 serious bodily injury to, or a pattern of family violence against,
475 the party making the allegation or a family household member of
476 either party. The court shall make written findings to document
477 how and why the presumption was or was not triggered.

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

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

483 1. Whether the perpetrator of family violence
484 has demonstrated that giving sole or joint physical or legal
485 custody of a child to the perpetrator is in the best interest of



486 the child because of the other parent's absence, mental illness,
487 substance abuse or such other circumstances which affect the best
488 interest of the child or children;

489 2. Whether the perpetrator has successfully
490 completed a batterer's treatment program;

491 3. Whether the perpetrator has successfully
492 completed a program of alcohol or drug abuse counseling if the
493 court determines that counseling is appropriate;

494 4. Whether the perpetrator has successfully
495 completed a parenting class if the court determines the class to
496 be appropriate;

497 5. If the perpetrator is on probation or
498 parole, whether he or she is restrained by a protective order
499 granted after a hearing, and whether he or she has complied with
500 its terms and conditions; and

501 6. Whether the perpetrator of domestic
502 violence has committed any further acts of domestic violence.

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

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

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



511 parental custody would be in the best interest of the child,
512 custody may be awarded solely to the parent less likely to
513 continue to perpetrate family violence. In such a case, the court
514 may mandate completion of a treatment program by the custodial
515 parent.

516 (c) If the court finds that the allegations of domestic
517 violence are completely unfounded, the chancery court shall order
518 the alleging party to pay all court costs and reasonable
519 attorney's fees incurred by the defending party in responding to
520 such allegations.

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

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

527 1. Order an exchange of the child to occur in
528 a protected setting;

529 2. Order visitation supervised in a manner to
530 be determined by the court;

531 3. Order the perpetrator of domestic or
532 family violence to attend and complete to the satisfaction of the
533 court a program of intervention for perpetrators or other
534 designated counseling as a condition of visitation;



535 4. Order the perpetrator of domestic or
536 family violence to abstain from possession or consumption of
537 alcohol or controlled substances during the visitation and for
538 twenty-four (24) hours preceding the visitation;

539 5. Order the perpetrator of domestic or
540 family violence to pay a fee to defray the cost of supervised
541 visitation;

542 6. Prohibit overnight visitation;

543 7. Require a bond from the perpetrator of
544 domestic or family violence for the return and safety of the
545 child; or

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

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

552 (e) The court may refer but shall not order an adult
553 who is a victim of family or domestic violence to attend
554 counseling relating to the victim's status or behavior as a
555 victim, individually or with the perpetrator of domestic or family
556 violence, as a condition of receiving custody of a child or as a
557 condition of visitation.



558 (f) If a court allows a family or household member to
559 supervise visitation, the court shall establish conditions to be
560 followed during visitation.

561 **SECTION 16.** Section 93-5-25, Mississippi Code of 1972, is
562 brought forward as follows:

563 93-5-25. The judgment of divorce shall not render
564 illegitimate the children begotten between the parties during
565 lawful marriage; but if the judgment be rendered because one (1)
566 of the parties was married to another at the time of the marriage
567 or pretended marriage between the parties, it shall adjudge the
568 marriage between the parties to have been invalid and void from
569 the beginning and the issue thereof shall be illegitimate and
570 subject to the disabilities of illegitimate children. And the
571 judgment may provide, in the discretion of the court, that a party
572 against whom a divorce is granted, because of adultery, shall not
573 be at liberty to marry again; in which case such party shall
574 remain in law as a married person. Provided, however, that after
575 one (1) year, the court may remove the disability and permit the
576 person to marry again, on petition and satisfactory evidence of
577 reformation, or for good cause shown, on the part of the party so
578 barred from remarriage; but the actions of the court under the
579 foregoing proviso shall not be construed as affecting any judgment
580 of divorce granted in any case where the discretion of the
581 chancellor has been exercised in barring one (1) party from
582 remarriage on account of adultery.



583 **SECTION 17.** Section 93-5-26, Mississippi Code of 1972, is
584 brought forward as follows:

585 93-5-26. Notwithstanding any other provisions of law, except
586 those provisions protecting the confidentiality of adoption
587 records and except for cases in which parental rights have been
588 legally terminated, access to records and information pertaining
589 to a minor child, including but not limited to medical, dental and
590 school records, shall not be denied to a parent because the parent
591 is not the child's custodial parent if such parent's parental
592 rights have not been terminated by adoption or by a termination of
593 parental rights proceeding.

594 **SECTION 18.** Section 93-5-27, Mississippi Code of 1972, is
595 brought forward as follows:

596 93-5-27. In all cases of divorce from the bonds of
597 matrimony, the marital rights shall cease with the judgment.

598 **SECTION 19.** Section 93-5-29, Mississippi Code of 1972, is
599 brought forward as follows:

600 93-5-29. If any person who shall be divorced on account of
601 their being within the degrees prohibited by law, shall afterwards
602 cohabit, they shall be liable to the pains and penalties provided
603 by law against incest. If any persons who shall be divorced on
604 account of a prior marriage, adultery, or other cause, shall
605 afterwards cohabit, they shall be liable to all the pains provided
606 by law against adultery.



607 **SECTION 20.** Section 93-5-31, Mississippi Code of 1972, is
608 brought forward as follows:

609 93-5-31. The judgment of divorce from the bonds of matrimony
610 may be revoked at any time by the court which granted it, under
611 such regulations and restrictions as it may deem proper to impose,
612 upon the joint application of the parties, and upon the production
613 of satisfactory evidence of their reconciliation.

614 **SECTION 21.** Section 93-5-33, Mississippi Code of 1972, is
615 brought forward as follows:

616 93-5-33. All complaints for divorce shall name the parties
617 to the suit, when married, and the number and names of the living
618 minor children born of the marriage. It shall be the duty of each
619 chancery clerk in the state to make a report of each divorce
620 granted in his county; and on forms furnished by the State Board
621 of Health, to show the following information, as correctly as he
622 is able to make such report: Names of parties; when married;
623 state of residence; children under eighteen (18) in this family as
624 of date couple last resided in same household; custody of
625 children; and the page and book in which judgment is recorded. He
626 shall certify to the said report and affix thereunto his seal, and
627 he shall forward it to the State Board of Health within ten (10)
628 days after adjournment of each term of court in his county. For
629 his services in preparing and forwarding said records to the State
630 Board of Health he shall receive the sum of Thirty-five Cents



631 (35¢) for each completed record, to be taxed to costs in each
632 divorce case as other fees are taxed.

633 **SECTION 22.** Section 93-5-34, Mississippi Code of 1972, is
634 brought forward as follows:

635 93-5-34. (1) It is the purpose of this section to provide a
636 means by which to facilitate a fair, efficient and swift process
637 to resolve matters regarding custody and visitation when a parent
638 receives temporary duty, deployment or mobilization orders from
639 the military. It is also the purpose of this section to
640 facilitate continued communication between military parents and
641 their minor children when the parent is on temporary duty or under
642 deployment or mobilization orders.

643 (2) As used in this section:

644 (a) The term "deployment" means the temporary transfer
645 of a service member serving in an active-duty status to another
646 location in support of combat or some other military operation.

647 (b) The term "mobilization" means the call-up of a
648 National Guard or Reserve service member to extended active duty
649 status. For purposes of this definition, "mobilization" does not
650 include National Guard or Reserve annual training.

651 (c) The term "temporary duty" means the transfer of a
652 service member from one military base to a different location,
653 usually another base, for a limited period of time to accomplish
654 training or to assist in the performance of a noncombat mission.



655 (d) The term "family member" means a person related by
656 blood or marriage and may include, for purposes of this statute, a
657 step-parent, grandparent, aunt, uncle, adult sibling or other
658 person related by blood or marriage.

659 (3) When a parent who has custody, or has joint custody with
660 primary physical custody, receives temporary duty, deployment or
661 mobilization orders from the military that involve moving a
662 substantial distance from the parent's residence having a material
663 effect on the parent's ability to exercise custody
664 responsibilities:

665 (a) Any temporary custody order for the child during
666 the parent's absence shall end no later than ten (10) days after
667 the parent returns, but shall not impair the discretion of the
668 court to conduct a hearing for emergency custody upon return of
669 the parent and within ten (10) days of the filing of a verified
670 motion for emergency custody alleging an immediate danger of
671 irreparable harm to the child; and

672 (b) The temporary duty, mobilization or deployment of
673 the service member and the temporary disruption to the child's
674 schedule shall not be factors in a determination of change of
675 circumstances if a motion is filed to transfer custody from the
676 service member.

677 (c) Any order entered under this section shall require
678 that:



679 (i) The nondeployed parent shall make the child or
680 children reasonably available to the deployed parent when the
681 latter parent has leave;

682 (ii) The nondeployed parent shall facilitate
683 opportunities for telephonic, "webcam" and electronic mail contact
684 between the deployed parent and the child or children during
685 deployment; and

686 (iii) The deployed parent shall provide timely
687 information regarding the parent's leave schedule to the
688 nondeployed parent.

689 (4) If the parent with visitation rights receives military
690 temporary duty, deployment or mobilization orders that involve
691 moving a substantial distance from the parent's residence or
692 otherwise have a material effect on the parent's ability to
693 exercise rights, the court otherwise may delegate the parent's
694 visitation rights, or a portion thereof, to a family member with a
695 close and substantial relationship to the service member's minor
696 child for the duration of the parent's absence, if delegating
697 visitation rights is in the child's best interest.

698 (5) Upon motion of a parent who has received military
699 temporary duty, deployment or mobilization orders, the court
700 shall, for a good cause shown, hold an expedited hearing in
701 custody and visitation matters instituted under this section when
702 the military duties of the parent have a material effect on the



703 parent's ability, or anticipated ability, to appear in person at a
704 regularly scheduled hearing.

705 (6) Upon motion of a parent who has received military
706 temporary duty, deployment or mobilization orders, the court
707 shall, upon reasonable advance notice and for good cause shown,
708 allow the parent to present testimony and evidence by affidavit or
709 electronic means in custody and visitation matters instituted
710 under this section when the military duties of the parent have a
711 material effect on the parent's ability to appear in person at a
712 regularly scheduled teleconference, or the Internet.

713 (7) Nothing in this section shall alter the duty of the
714 court to consider the best interest of the child in deciding
715 custody or visitation matters.

716 (8) Any hearing pursuant to this section shall take
717 precedence over all other causes not involving the public
718 interest, to the end that these cases may be expedited.

719 **SECTION 23.** This act shall take effect and be in force from
720 and after July 1, 2024.

