

By: Representatives Gregory, Clark, Hamilton To: Judiciary A  
(6th), Jennings, Martinson, Scott

## HOUSE BILL NO. 377

1 AN ACT TO AMEND SECTION 93-9-9, MISSISSIPPI CODE OF 1972, TO  
2 PROVIDE THAT IN PATERNITY PROCEEDINGS THE BEST INTEREST OF THE  
3 CHILD SHALL DETERMINE THE SURNAME OF A CHILD; TO AMEND SECTION  
4 41-57-23, MISSISSIPPI CODE OF 1972, IN CONFORMITY; AND FOR RELATED  
5 PURPOSES.

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

7 **SECTION 1.** Section 93-9-9, Mississippi Code of 1972, is  
8 amended as follows:

9 93-9-9. (1) Paternity may be determined upon the petition  
10 of the mother, or father, the child or any public authority  
11 chargeable by law with the support of the child; provided that  
12 such an adjudication after the death of the defendant must be made  
13 only upon clear and convincing evidence. If paternity has been  
14 lawfully determined, or has been acknowledged in writing according  
15 to the laws of this state, the liabilities of the noncustodial  
16 parent may be enforced in the same or other proceedings by the  
17 custodial parent, the child, or any public authority which has  
18 furnished or may furnish the reasonable expenses of pregnancy,  
19 confinement, education, necessary support and maintenance, and  
20 medical or funeral expenses for the custodial parent or the child.  
21 The trier of fact shall receive without the need for third-party  
22 foundation testimony certified, attested or sworn documentation as  
23 evidence of (a) childbirth records; (b) cost of filing fees; (c)  
24 court costs; (d) services of process fees; (e) mailing cost; (f)  
25 genetic tests and testing fees; (g) the department's attorney's  
26 fees; (h) in cases where the state or any of its entities or  
27 divisions have provided medical services to the child or the  
28 child's mother, all costs of prenatal care, birthing, postnatal

29 care and any other medical expenses incurred by the child or by  
30 the mother as a consequence of the mother's pregnancy or delivery;  
31 and (i) funeral expenses. All costs and fees shall be ordered  
32 paid to the Department of Human Services in all cases successfully  
33 prosecuted with a minimum of Two Hundred Fifty Dollars (\$250.00)  
34 in attorney's fees or an amount determined by the court without  
35 submitting an affidavit. However, proceedings hereunder shall not  
36 be instituted by the Department of Human Services after the child  
37 has reached the age of eighteen (18) years but proceedings may be  
38 instituted by a private attorney at any time until such child  
39 attains the age of twenty-one (21) years unless the child has been  
40 emancipated as provided in Section 93-5-23 and Section 93-11-65.  
41 In the event of court-determined paternity, the surname of the  
42 child shall be determined based on the best interest of the child.

43 (2) If the alleged father in an action to determine  
44 paternity to which the Department of Human Services is a party  
45 fails to appear for a scheduled hearing after having been served  
46 with process or subsequent notice consistent with the Rules of  
47 Civil Procedure, his paternity of the child(ren) shall be  
48 established by the court if an affidavit sworn to by the mother  
49 averring the alleged father's paternity of the child has  
50 accompanied the complaint to determine paternity. Said affidavit  
51 shall constitute sufficient grounds for the court's finding of the  
52 alleged father's paternity without the necessity of the presence  
53 or testimony of the mother at the said hearing. The court shall,  
54 upon motion by the Department of Human Services, enter a judgment  
55 of paternity. Any person who shall willfully and knowingly file a  
56 false affidavit shall be subject to a fine of not more than One  
57 Thousand Dollars (\$1,000.00).

58 (3) Upon application of both parents to the State Board of  
59 Health and receipt by the State Board of Health of a sworn  
60 acknowledgement of paternity executed by both parents subsequent  
61 to the birth of a child born out of wedlock, the birth certificate

62 of the child shall be amended to show such paternity if paternity  
63 is not shown on the birth certificate. Upon request of the  
64 parents for the legitimization of a child under this section and  
65 if the best interest of the child will be served, the surname of  
66 the child shall be changed on the certificate to that of the  
67 father.

68 (4) (a) A signed voluntary acknowledgment of paternity is  
69 subject to the right of any signatory to rescind the  
70 acknowledgment within the earlier of:

71 (i) Sixty (60) days; or

72 (ii) The date of a judicial proceeding relating to  
73 the child, including a proceeding to establish a support order, in  
74 which the signatory is a party.

75 (b) After the expiration of the sixty-day period  
76 specified in subsection (4)(a)(i) of this section, a signed  
77 voluntary acknowledgment of paternity may be challenged in court  
78 only on the basis of fraud, duress or material mistake of fact,  
79 with the burden of proof upon the challenger; the legal  
80 responsibilities, including child support obligations, of any  
81 signatory arising from the acknowledgment may not be suspended  
82 during the pendency of the challenge, except for good cause shown.

83 **SECTION 2.** Section 41-57-23, Mississippi Code of 1972, is  
84 amended as follows:

85 41-57-23. (1) Any petition, bill of complaint or other  
86 proceeding filed in the chancery court to: (a) change the date of  
87 birth by two (2) or more days, (b) change the surname of a child,  
88 (c) change the surname of either or both parents, (d) change the  
89 birthplace of the child because of an error or omission of such  
90 information as originally recorded or (e) make any changes or  
91 additions to a birth certificate resulting from a legitimation,  
92 filiation or any changes not specifically authorized elsewhere by  
93 statute, shall be filed in the county of residence of the  
94 petitioner or filed in any chancery court district of the state if

95 the petitioner be a nonresident petitioner. In all such  
96 proceedings, the State Board of Health shall be made a respondent  
97 therein, and a certified copy of the petition, bill of complaint  
98 or other proceeding shall be forwarded to the State Board of  
99 Health. Process may be served upon the State Registrar of Vital  
100 Records. The State Board of Health shall file an answer to all  
101 such proceedings within the time as provided by general law. The  
102 provisions of this section shall not apply to adoption  
103 proceedings. Upon receipt of a certified copy of a decree, which  
104 authorizes and directs the State Board of Health to alter the  
105 certificate, it shall comply with all of the provisions of such  
106 decree.

107 (2) If a child is born to a mother who was not married at  
108 the time of conception or birth, or at any time between conception  
109 and birth, and the natural father acknowledges paternity, the name  
110 of the father shall be added to the birth certificate if a  
111 notarized affidavit by both parents acknowledging paternity is  
112 received on the form prescribed or as provided in Section 93-9-9.  
113 The surname of the child shall be that of the father except that  
114 an affidavit filed at birth by both listed mother and father or  
115 the best interest of the child may alter this rule. In the event  
116 the mother was married at the time of conception or birth, or at  
117 any time between conception and birth, or if a father is already  
118 listed on the birth certificate, action must be taken under  
119 Section 41-57-23(1) to add or change the name of the father.

120 (3) (a) A signed voluntary acknowledgment of paternity is  
121 subject to the right of any signatory to rescind the  
122 acknowledgment within the earlier of:

123 (i) Sixty (60) days; or

124 (ii) The date of a judicial proceeding relating to  
125 the child, including a proceeding to establish a support order, in  
126 which the signatory is a party.

127                   (b) After the expiration of the sixty-day period  
128 specified in subsection (3)(a)(i) of this section, a signed  
129 voluntary acknowledgment of paternity may be challenged in court  
130 only on the basis of fraud, duress, or material mistake of fact,  
131 with the burden of proof upon the challenger; the legal  
132 responsibilities, including child support obligations, of any  
133 signatory arising from the acknowledgment may not be suspended  
134 during the pendency of the challenge, except for good cause shown.

135                   **SECTION 3.** This act shall take effect and be in force from  
136 and after July 1, 2006.