

By: Representative Bourdeaux

To: Judiciary A

HOUSE BILL NO. 427

1 AN ACT TO REQUIRE A PREPLACEMENT EVALUATION AND INVESTIGATION
2 IN ADOPTIONS TO DETERMINE THE SUITABILITY OF PROSPECTIVE PARENTS;
3 TO PROVIDE THAT A PETITION FOR ADOPTION SHALL BE MADE ONLY AFTER A
4 PREPLACEMENT EVALUATION; TO AUTHORIZE THE DEPARTMENT OF HUMAN
5 SERVICES TO REVIEW AND INVESTIGATE CIRCUMSTANCES OF PLACEMENT; TO
6 AMEND SECTION 93-17-3, MISSISSIPPI CODE OF 1972, TO REQUIRE A
7 CERTIFICATE OF REVIEW FROM THE DEPARTMENT OF HUMAN SERVICES IN
8 ADOPTION PROCEEDINGS; TO AMEND SECTION 93-17-5, MISSISSIPPI CODE
9 OF 1972, TO PROVIDE THAT THE DEPARTMENT OF HUMAN SERVICES SHALL BE
10 A PARTY TO AN ADOPTION; TO AMEND SECTIONS 93-17-11 AND 93-17-13,
11 MISSISSIPPI CODE OF 1972, IN CONFORMITY TO THE PROVISIONS OF THIS
12 ACT; AND FOR RELATED PURPOSES.

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

14 SECTION 1. (1) An investigator shall assess the information
15 required by Section 93-17-1 et seq. to determine whether it raises
16 a specific concern that placement of any minor, or a particular
17 minor, in the home of the individual would pose a significant risk
18 of harm to the physical or psychological well-being of the minor.

19 (2) If an investigator determines that the information
20 assessed does not raise a specific concern, the investigator shall
21 find that the individual is suited to be an adoptive parent. The
22 evaluator may comment about any factor that in the investigator's
23 opinion makes the individual suited in general or for a particular
24 minor.

25 (3) If an investigator determines that the information
26 assessed raises a specific concern, the investigator, on the basis
27 of the original or any further investigation, shall find that the
28 individual is or is not suited to be an adoptive parent. The
29 investigator shall support the finding with a written explanation.

30 SECTION 2. (1) If a preplacement evaluation contains a
31 finding that an individual is suited to be an adoptive parent, the
32 investigator shall give the individual a signed copy of the

33 evaluation. At the individual's request, the investigator shall
34 furnish a copy of the evaluation to a person authorized to place a
35 minor for adoption and, unless the individual requests otherwise,
36 edit the copy to exclude identifying information.

37 (2) If a preplacement evaluation contains a finding that an
38 individual is not suited to be an adoptive parent of any minor, or
39 a particular minor, the investigator shall immediately give a
40 signed copy of the evaluation to the individual and to the
41 Department of Human Services. The department shall retain for ten
42 (10) years the copy and a copy of any court order concerning the
43 evaluation issued pursuant to Section 3 or 4 of this act.

44 (3) An investigator shall retain for two (2) years the
45 original of a completed or incomplete preplacement evaluation and
46 a list of every source for each item of information in the
47 evaluation.

48 (4) An investigator who conducted an evaluation in good
49 faith is not subject to civil liability for anything contained in
50 the evaluation.

51 SECTION 3. (1) Within ninety (90) days after an individual
52 receives a preplacement evaluation with a finding that he or she
53 is not suited to be an adoptive parent, the individual may
54 petition a court for review of the evaluation.

55 (2) If the court determines that the petitioner has failed
56 to prove suitability by a preponderance of the evidence, it shall
57 order that the petitioner not be permitted to adopt a minor and
58 shall send a copy of the order to the Department of Human Services
59 to be retained with the copy of the original evaluation. If, at
60 the time of the court's determination, the petitioner has custody
61 of a minor for purposes of adoption, the court shall make an
62 appropriate order for the care and custody of the minor.

63 (3) If the court determines that the petitioner has proved
64 suitability, the court shall find the petitioner suitable to be an
65 adoptive parent and the petitioner may commence or continue a
66 proceeding for adoption of a minor. The court shall send a copy
67 of its order to the department to be retained with the copy of the
68 original evaluation.

69 SECTION 4. If, before a decree of adoption is issued, the
70 Department of Human Services learns from an investigator or

71 another person that a minor has been placed for adoption with an
72 individual who is the subject of a preplacement evaluation on file
73 with the department containing a finding of unsuitability, the
74 department shall immediately review the evaluation and investigate
75 the circumstances of the placement and may request that the
76 individual return the minor to the custody of the person who
77 placed the minor or to the department. If the individual refuses
78 to return the minor, the department shall immediately commence an
79 action or proceeding to remove the minor from the home of the
80 individual pursuant to the appropriate state's child protection
81 statute and, pending a hearing, the court shall make an
82 appropriate order for the care and custody of the minor.

83 SECTION 5. Section 93-17-3, Mississippi Code of 1972, is
84 amended as follows:

85 93-17-3. Any person may be adopted in accordance with the
86 provisions of this chapter in term time or in vacation by an
87 unmarried adult or by a married person whose spouse joins in the
88 petition, provided that the petitioner or petitioners shall have
89 resided in this state for ninety (90) days preceding the filing of
90 the petition. However, if (a) the petitioner or petitioners, or
91 one (1) of them, be related to the child within the third degree
92 according to civil law, or if (b) the adoption is presented to the
93 court by an adoption agency licensed by the State of Mississippi,
94 said residence restriction shall not apply. Such adoption shall
95 be by sworn petition filed in the chancery court of the county in
96 which the adopting petitioner or petitioners reside or in which
97 the child to be adopted resides or was born, or was found when it
98 was abandoned or deserted, or in which the home is located to
99 which the child shall have been surrendered by a person authorized
100 to so do. The petition shall be accompanied by a doctor's
101 certificate showing the physical and mental condition of the child
102 to be adopted, a certificate of review from the Department of
103 Human Services that all legal requirements have been met for an
104 adoption and a sworn statement of all property, if any owned by

105 the child. Should the doctor's certificate indicate any abnormal
106 mental or physical condition or defect, such condition or defect
107 shall not in the discretion of the chancellor bar the adoption of
108 the child if the adopting parent or parents shall file an
109 affidavit stating full and complete knowledge of such condition or
110 defect and stating a desire to adopt the child, notwithstanding
111 such condition or defect. The court shall have the power to
112 change the name of the child as a part of the adoption
113 proceedings. The word "child" herein shall be construed to refer
114 to the person to be adopted, though an adult.

115 SECTION 6. Section 93-17-5, Mississippi Code of 1972, is
116 amended as follows:

117 93-17-5. (1) There shall be made parties to the proceeding
118 by process or by the filing therein of a consent to the adoption
119 proposed in the petition, which consent shall be duly sworn to or
120 acknowledged and executed only by the following persons, but not
121 before seventy-two (72) hours after the birth of said child: (a)
122 the parents, or parent, if only one (1) parent, though either be
123 under the age of twenty-one (21) years; or, (b) in the event both
124 parents are dead, then any two (2) adult kin of the child within
125 the third degree computed according to the civil law, provided
126 that, if one of such kin is in possession of the child, he or she
127 shall join in the petition or be made a party to the suit; or, (c)
128 the guardian ad litem of an abandoned child, upon petition showing
129 that the names of the parents of such child are unknown after
130 diligent search and inquiry by the petitioners. In addition to
131 the above, there shall be made parties to any proceeding to adopt
132 a child, either by process or by the filing of a consent to the
133 adoption proposed in the petition, the following:

134 (i) Those persons having physical custody of such
135 child, except persons having such child as foster parents as a
136 result of placement with them by the Department of Human Services
137 of the State of Mississippi.

138 (ii) Any person to whom custody of such child may

139 have been awarded by a court of competent jurisdiction of the
140 State of Mississippi.

141 (iii) The agent of the county Department of Human
142 Services of the State of Mississippi that has placed a child in
143 foster care, either by agreement or by court order.

144 (iv) The Department of Human Services.

145 (2) Such consent may also be executed and filed by the duly
146 authorized officer or representative of a home to whose care the
147 child has been delivered. The child shall join the petition by
148 its next friend.

149 **[Until June 30, 1999, this subsection (3) shall read as
150 follows:]**

151 (3) In the case of a child born out of wedlock, the father
152 shall not have a right to object to an adoption unless he has
153 demonstrated, within the period ending thirty (30) days after the
154 birth of the child, a full commitment to the responsibilities of
155 parenthood. Determination of the rights of the father of a child
156 born out of wedlock may be made in proceedings pursuant to a
157 Petition for Determination of Rights as provided in Section
158 93-17-6.

159 **[From and after July 1, 1999, this subsection (3) shall read
160 as follows:]**

161 (3) In the case of a child born out of wedlock, the father
162 shall not be deemed to be a parent for the purpose of this
163 chapter, and no reference shall be made to the illegitimacy of
164 such child.

165 (4) If such consent be not filed, then process shall be had
166 upon the parties as provided by law for process in person or by
167 publication, if they be nonresidents of the state or are not found
168 therein, after diligent search and inquiry, or are unknown after
169 diligent search and inquiry; provided that the court or chancellor
170 in vacation may fix a date in termtime or in vacation to which
171 process may be returnable and shall have power to proceed in
172 termtime or vacation. In any event, if the child is more than

173 fourteen (14) years of age, a consent to the adoption, sworn to or
174 acknowledged by the child, shall also be required or personal
175 service of process shall be had upon the child in the same manner
176 and in the same effect as if it were an adult.

177 SECTION 7. Section 93-17-11, Mississippi Code of 1972, is
178 amended as follows:

179 93-17-11. At any time after the filing of the petition for
180 adoption and completion of process thereon, and prior to the
181 entering of a final decree, the court shall * * * require a
182 preplacement evaluation, investigation and report to the court be
183 made by an investigator the court shall designate and direct
184 concerning the child, giving the material facts upon which the
185 court may determine whether the child is a proper subject for
186 adoption, whether the petitioners or petitioner are suitable
187 parents for the child, whether the adoption is to its best
188 interest, and any other facts or circumstances which may be
189 material to the proposed adoption. The court * * * shall stay the
190 proceedings in said cause for such reasonable time which shall be
191 no less than thirty (30) days for the completion of such
192 investigation and report by the person, officer, or home
193 designated and authorized to make the same.

194 Upon the filing of such consent or the completion of such
195 process and the filing of such investigation and report, * * * and
196 the presentation of such other evidence as may be desired by the
197 court, if the court determines that it is to the best interests of
198 the child that an interlocutory decree of adoption be entered, the
199 court may thereupon enter an interlocutory decree upon such terms
200 and conditions as may be determined by the court, in its
201 discretion, but including therein that the complete care, custody
202 and control of the child shall be vested in the petitioner or
203 petitioners until further orders of the court and that during such
204 time the child shall be and remain a ward of the court. If the
205 court determines by decree at any time during the pendency of the
206 proceeding that it is not to the best interests of the child that

207 the adoption proceed, the petitioners shall be entitled to at
208 least five (5) days' notice upon their attorneys of record and a
209 hearing with the right of appeal as provided by law from a
210 dismissal of the petition; provided, that the bond perfecting the
211 appeal shall be filed within ten (10) days from the entry of the
212 decree of dismissal and the bond shall be in such amount as the
213 chancellor may determine and supersedeas may be granted by the
214 chancellor or as otherwise provided by law for appeal from final
215 decrees.

216 After the entry of the interlocutory decree and before entry
217 of the final decree, the court may require such further and
218 additional investigation and reports as it may deem proper. The
219 rights of the parties filing the consent or served with process
220 shall be subject to such decree but shall not be divested until
221 entry of the final decree.

222 SECTION 8. Section 93-17-13, Mississippi Code of 1972, is
223 amended as follows:

224 93-17-13. A final decree of adoption shall not be entered
225 unless the provisions of this chapter have been followed and
226 before the expiration of six (6) months from the entry of the
227 interlocutory decree except (a) when a child is a stepchild of a
228 petitioner or is related by blood to the petitioner within the
229 third degree according to the rules of the civil law or in any
230 case in which the chancellor in the exercise of his discretion
231 shall determine from all the proceedings and evidence in said
232 cause that the six-month waiting period is not necessary or
233 required for the benefit of the court, the petitioners or the
234 child to be adopted, and shall so adjudicate in the decree entered
235 in said cause, in either of which cases the final decree may be
236 entered immediately without any delay and without an interlocutory
237 decree, or (b) when the child has resided in the home of any
238 petitioner prior to the granting of the interlocutory decree, in
239 which case the court may, in its discretion, shorten the waiting
240 period by the length of time the child has thus resided.

241 The final decree shall adjudicate, in addition to such other
242 provisions as may be found by the court to be proper for the
243 protection of the interests of the child; and its effect, unless
244 otherwise specifically provided, shall be that (a) the child shall
245 inherit from and through the adopting parents and shall likewise
246 inherit from the other children of the adopting parents to the
247 same extent and under the same conditions as provided for the
248 inheritance between brothers and sisters of the full blood by the
249 laws of descent and distribution of the State of Mississippi, and
250 that the adopting parents and their other children shall inherit
251 from the child, just as if such child had been born to the
252 adopting parents in lawful wedlock; (b) the child and the adopting
253 parents and adoptive kindred are vested with all of the rights,
254 powers, duties and obligations, respectively, as if such child had
255 been born to the adopting parents in lawful wedlock, including all
256 rights existing by virtue of Section 11-7-13, Mississippi Code of
257 1972; provided, however, that inheritance by or from the adopted
258 child shall be governed by subsection (a) above; (c) that the name
259 of the child shall be changed if desired; and (d) that the natural
260 parents and natural kindred of the child shall not inherit by or
261 through the child except as to a natural parent who is the spouse
262 of the adopting parent, and all parental rights of the natural
263 parent, or parents, shall be terminated, except as to a natural
264 parent who is the spouse of the adopting parent. Nothing in this
265 chapter shall restrict the right of any person to dispose of
266 property under a last will and testament.

267 SECTION 9. Sections 1, 2, 3 and 4 of this act shall be
268 codified in Chapter 17 of Title 93, Mississippi Code of 1972.

269 SECTION 10. This act shall take effect and be in force from
270 and after July 1, 1999.