

By: Representative Bourdeaux

To: Judiciary A

HOUSE BILL NO. 428

1 AN ACT TO REQUIRE A PREPLACEMENT EVALUATION OF THE PETITIONER
2 IN ADOPTION PROCEEDINGS IN WHICH THE PETITIONER IS NOT A RESIDENT
3 OF THIS STATE AND IS SEEKING TO ADOPT A CHILD WHO IS A RESIDENT OF
4 THIS STATE AND WHO IS NOT A RELATIVE OF THE PETITIONER, TO
5 DETERMINE THE SUITABILITY OF THE PETITIONER AS AN ADOPTIVE PARENT;
6 TO PROVIDE THAT ANY SUCH PETITIONER MUST HAVE A CURRENT, FAVORABLE
7 WRITTEN PREPLACEMENT EVALUATION BEFORE HE MAY ADOPT SUCH A CHILD;
8 TO PRESCRIBE THE CONTENTS OF A PREPLACEMENT EVALUATION; TO
9 AUTHORIZE THE DEPARTMENT OF HUMAN SERVICES TO REVIEW AND
10 INVESTIGATE CIRCUMSTANCES OF PLACEMENT; TO AMEND SECTION 93-17-3,
11 MISSISSIPPI CODE OF 1972, TO REQUIRE A CERTIFICATE OF REVIEW FROM
12 THE DEPARTMENT OF HUMAN SERVICES IN ADOPTION PROCEEDINGS
13 CERTIFYING THAT ALL LEGAL REQUIREMENTS HAVE BEEN MET FOR AN
14 ADOPTION, INCLUDING THE PREPLACEMENT EVALUATION IF REQUIRED; TO
15 AMEND SECTION 93-17-5, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT
16 THE DEPARTMENT OF HUMAN SERVICES SHALL BE A PARTY TO ADOPTION
17 PROCEEDINGS; TO AMEND SECTION 93-17-11, MISSISSIPPI CODE OF 1972,
18 TO PROVIDE THAT WHEN A PETITIONER IN AN ADOPTION PROCEEDING WHO IS
19 NOT A RESIDENT OF THIS STATE SEEKS TO ADOPT A CHILD WHO RESIDES IN
20 THIS STATE AND WHO IS NOT A RELATIVE OF THE PETITIONER, THE COURT
21 MUST FIRST HAVE RECEIVED THE REQUIRED PREPLACEMENT EVALUATION
22 BEFORE IT MAY ENTER ANY ADOPTION DECREE; TO PROVIDE THAT IN ANY
23 SUCH CASE, THE COURT SHALL NOT ENTER A DECREE UNTIL THE CHILD HAS
24 BEEN IN THE STATE FOR NOT LESS THAN 14 DAYS AFTER THE CHILD'S
25 BIRTH; TO AMEND SECTION 93-17-13, MISSISSIPPI CODE OF 1972, IN
26 CONFORMITY TO THE PROVISIONS OF THIS ACT; AND FOR RELATED
27 PURPOSES.

28 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:
29 SECTION 1. When a person who is not a resident of this state
30 seeks to adopt a child who resides in this state and who is not a
31 relative of that person, that person must first have a
32 preplacement evaluation performed by an investigator of the
33 Department of Human Services, an investigator approved by the
34 department, or an investigator appointed or approved by the court
35 in which the person has filed an adoption petition, in accordance
36 with the provisions of Sections 2 through 6 of this act. Any such
37 person must have a current, favorable written preplacement
38 evaluation before the person may adopt a child who resides in this
39 state and who is not a relative of that person. An evaluation is

40 current if it is prepared or updated within the eighteen (18)
41 months preceding the placement of the child with the person for
42 adoption. An evaluation is favorable if it contains a finding
43 that the person is suited to be an adoptive parent, either in
44 general or for a particular child.

45 SECTION 2. (1) A person requesting a preplacement
46 evaluation need not have located a prospective adoptee when the
47 request is made, and the person may request more than one (1)
48 evaluation.

49 (2) A preplacement evaluation must be completed within
50 forty-five (45) days after it is requested. An investigator shall
51 expedite an evaluation for a person who has located a prospective
52 adoptee.

53 (3) A preplacement evaluation must be based upon a personal
54 interview and visit at the residence of the person being
55 evaluated, personal interviews with others who know the person and
56 may have information relevant to the evaluation, and the
57 information required by subsection (4) of this section.

58 (4) A preplacement evaluation must contain the following
59 information about the person being evaluated:

60 (a) Age and date of birth, nationality, racial or
61 ethnic background, and any religious affiliation;

62 (b) Marital status and family history, including the
63 age and location of any child of the person and the identity of
64 and relationship to anyone else living in the person's household;

65 (c) Physical and mental health, and any history of
66 abuse of alcohol or drugs;

67 (d) Educational and employment history and any special
68 skills;

69 (e) Property and income, including outstanding
70 financial obligations as indicated in a current credit report or
71 financial statement furnished by the person;

72 (f) Any previous request for an evaluation or
73 involvement in an adoptive placement and the outcome of the
74 evaluation or placement;

75 (g) Whether the person has been charged with having
76 committed domestic violence or a violation of the state laws
77 regarding child abuse and neglect, and the disposition of the

78 charges, or whether the person is subject to a court order
79 restricting the person's right to custody or visitation with a
80 child;

81 (h) Whether the person has been convicted of a crime
82 other than a minor traffic violation;

83 (i) Whether the person has located a parent interested
84 in placing a child with the person for adoption and, if so, a
85 brief description of the parent and the child; and

86 (j) Any other fact or circumstance that may be relevant
87 in determining whether the person is suited to be an adoptive
88 parent, including the quality of the environment in the person's
89 home and the functioning of other children in the person's
90 household.

91 (5) A person being evaluated must submit to fingerprinting
92 and sign a release permitting the investigator to obtain from an
93 appropriate law enforcement agency any record indicating that the
94 person has been convicted of a crime other than a minor traffic
95 violation.

96 (6) A person being evaluated shall, at the request of the
97 investigator, sign any release necessary for the evaluator to
98 obtain information required by subsection (4) of this section.

99 SECTION 3. (1) An investigator shall assess the information
100 required by Section 2 of this act to determine whether it raises a
101 specific concern that placement of any child, or a particular
102 child, in the home of the person would pose a significant risk of
103 harm to the physical or psychological well-being of the child.

104 (2) If an investigator determines that the information
105 assessed does not raise a specific concern, the investigator shall
106 find that the person is suited to be an adoptive parent. The
107 investigator may comment about any factor that in the
108 investigator's opinion makes the person suited in general or for a
109 particular child.

110 (3) If an investigator determines that the information
111 assessed raises a specific concern, the investigator, on the basis

112 of the original or any further investigation, shall find that the
113 person is or is not suited to be an adoptive parent. The
114 investigator shall support the finding with a written explanation.

115 SECTION 4. (1) If a preplacement evaluation contains a
116 finding that a person is suited to be an adoptive parent, the
117 investigator shall give the person a signed copy of the
118 evaluation. At the person's request, the investigator shall
119 furnish a copy of the evaluation to a person authorized to place a
120 child for adoption and, unless the person requests otherwise, edit
121 the copy to exclude identifying information.

122 (2) If a preplacement evaluation contains a finding that a
123 person is not suited to be an adoptive parent of any child, or a
124 particular child, the investigator shall immediately give a signed
125 copy of the evaluation to the person and to the Department of
126 Human Services. The department shall retain for ten (10) years
127 the copy and a copy of any court order concerning the evaluation
128 issued pursuant to Section 5 or 6 of this act.

129 (3) An investigator shall retain for two (2) years the
130 original of a completed or incomplete preplacement evaluation and
131 a list of every source for each item of information in the
132 evaluation.

133 (4) An investigator who conducted an evaluation in good
134 faith is not subject to civil liability for anything contained in
135 the evaluation.

136 SECTION 5. (1) Within ninety (90) days after a person
137 receives a preplacement evaluation with a finding that he or she
138 is not suited to be an adoptive parent, the person may petition a
139 court for review of the evaluation. If the person has already
140 filed a petition for adoption, the petition authorized under this
141 subsection shall be filed in the court in which the person has
142 filed the adoption petition.

143 (2) If the court determines that the petitioner has failed
144 to prove suitability by a preponderance of the evidence, it shall
145 order that the petitioner not be permitted to adopt a child and

146 shall send a copy of the order to the Department of Human Services
147 to be retained with the copy of the original evaluation. If, at
148 the time of the court's determination, the petitioner has custody
149 of a child for purposes of adoption, the court shall make an
150 appropriate order for the care and custody of the child.

151 (3) If the court determines that the petitioner has proved
152 suitability, the court shall find the petitioner suitable to be an
153 adoptive parent and the petitioner may commence or continue a
154 proceeding for adoption of a child. The court shall send a copy
155 of its order to the department to be retained with the copy of the
156 original evaluation.

157 SECTION 6. If, before a decree of adoption is issued, the
158 Department of Human Services learns from an investigator or
159 another person that a child has been placed for adoption with a
160 person who is the subject of a preplacement evaluation on file
161 with the department containing a finding of unsuitability, the
162 department shall immediately review the evaluation and investigate
163 the circumstances of the placement and may request that the person
164 return the child to the custody of the person who placed the child
165 or to the department. If the person refuses to return the child,
166 the department shall immediately commence an action or proceeding
167 to remove the child from the home of the person pursuant to the
168 appropriate state child protection laws and, pending a hearing,
169 the court shall make an appropriate order for the care and custody
170 of the child.

171 SECTION 7. Section 93-17-3, Mississippi Code of 1972, is
172 amended as follows:

173 93-17-3. Any person may be adopted in accordance with the
174 provisions of this chapter in term time or in vacation by an
175 unmarried adult or by a married person whose spouse joins in the
176 petition, provided that the petitioner or petitioners shall have
177 resided in this state for ninety (90) days preceding the filing of
178 the petition. However, if (a) the petitioner or petitioners, or
179 one (1) of them, be related to the child within the third degree

180 according to civil law, or if (b) the adoption is presented to the
181 court by an adoption agency licensed by the State of Mississippi,
182 the residence restriction shall not apply. Any petitioner who is
183 not a resident of this state seeking to adopt a child who resides
184 in this state and who is not a relative of the petitioner shall be
185 subject to Sections 1 through 6 of this act. Such adoption shall
186 be by sworn petition filed in the chancery court of the county in
187 which the adopting petitioner or petitioners reside or in which
188 the child to be adopted resides or was born, or was found when it
189 was abandoned or deserted, or in which the home is located to
190 which the child shall have been surrendered by a person authorized
191 to so do. The petition shall be accompanied by a doctor's
192 certificate showing the physical and mental condition of the child
193 to be adopted, a certificate of review from the Department of
194 Human Services that all legal requirements have been met for an
195 adoption, including the preplacement evaluation if required by
196 Sections 1 through 6 of this act, and a sworn statement of all
197 property, if any owned by the child. Should the doctor's
198 certificate indicate any abnormal mental or physical condition or
199 defect, such condition or defect shall not in the discretion of
200 the chancellor bar the adoption of the child if the adopting
201 parent or parents shall file an affidavit stating full and
202 complete knowledge of such condition or defect and stating a
203 desire to adopt the child, notwithstanding such condition or
204 defect. The court shall have the power to change the name of the
205 child as a part of the adoption proceedings. The word "child"
206 herein shall be construed to refer to the person to be adopted,
207 though an adult.

208 SECTION 8. Section 93-17-5, Mississippi Code of 1972, is
209 amended as follows:

210 93-17-5. (1) There shall be made parties to the proceeding
211 by process or by the filing therein of a consent to the adoption
212 proposed in the petition, which consent shall be duly sworn to or
213 acknowledged and executed only by the following persons, but not

214 before seventy-two (72) hours after the birth of said child: (a)
215 the parents, or parent, if only one (1) parent, though either be
216 under the age of twenty-one (21) years; or, (b) in the event both
217 parents are dead, then any two (2) adult kin of the child within
218 the third degree computed according to the civil law, provided
219 that, if one of such kin is in possession of the child, he or she
220 shall join in the petition or be made a party to the suit; or, (c)
221 the guardian ad litem of an abandoned child, upon petition showing
222 that the names of the parents of such child are unknown after
223 diligent search and inquiry by the petitioners. In addition to
224 the above, there shall be made parties to any proceeding to adopt
225 a child, either by process or by the filing of a consent to the
226 adoption proposed in the petition, the following:

227 (i) Those persons having physical custody of such
228 child, except persons having such child as foster parents as a
229 result of placement with them by the Department of Human Services
230 of the State of Mississippi.

231 (ii) Any person to whom custody of such child may
232 have been awarded by a court of competent jurisdiction of the
233 State of Mississippi.

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

237 (iv) The Department of Human Services.

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

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

244 (3) In the case of a child born out of wedlock, the father
245 shall not have a right to object to an adoption unless he has
246 demonstrated, within the period ending thirty (30) days after the
247 birth of the child, a full commitment to the responsibilities of

248 parenthood. Determination of the rights of the father of a child
249 born out of wedlock may be made in proceedings pursuant to a
250 Petition for Determination of Rights as provided in Section
251 93-17-6.

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

254 (3) In the case of a child born out of wedlock, the father
255 shall not be deemed to be a parent for the purpose of this
256 chapter, and no reference shall be made to the illegitimacy of
257 such child.

258 (4) If such consent be not filed, then process shall be had
259 upon the parties as provided by law for process in person or by
260 publication, if they be nonresidents of the state or are not found
261 therein, after diligent search and inquiry, or are unknown after
262 diligent search and inquiry; provided that the court or chancellor
263 in vacation may fix a date in termtime or in vacation to which
264 process may be returnable and shall have power to proceed in
265 termtime or vacation. In any event, if the child is more than
266 fourteen (14) years of age, a consent to the adoption, sworn to or
267 acknowledged by the child, shall also be required or personal
268 service of process shall be had upon the child in the same manner
269 and in the same effect as if it were an adult.

270 SECTION 9. Section 93-17-11, Mississippi Code of 1972, is
271 amended as follows:

272 93-17-11. At any time after the filing of the petition for
273 adoption and completion of process thereon, and prior to the
274 entering of a final decree, the court may, in its discretion, of
275 its own motion, or on motion of any party to the proceeding
276 require an investigation and report to the court be made by a
277 person, officer, or home as the court may designate and direct
278 concerning the child, giving the material facts upon which the
279 court may determine whether the child is a proper subject for
280 adoption, whether the petitioners or petitioner are suitable
281 parents for the child, whether the adoption is to its best

282 interest, and any other facts or circumstances which may be
283 material to the proposed adoption. The court when such
284 investigation and report may be required by it shall stay the
285 proceedings in the cause for such reasonable time as may be
286 necessary or required in the opinion of the court for the
287 completion of such investigation and report by the person,
288 officer, or home designated and authorized to make the same. When
289 a petitioner who is not a resident of this state seeks to adopt a
290 child who resides in this state and who is not a relative of the
291 petitioner, the court must first have received the preplacement
292 evaluation of the petitioner that is required by Sections 1
293 through 6 of this act before it may enter an interlocutory decree
294 or final decree of adoption. If a preplacement evaluation has not
295 been prepared at the time the petition for adoption is filed, the
296 court shall stay the proceedings until it has received the
297 preplacement evaluation of the petitioner. In any such case, the
298 court shall not enter an interlocutory decree or final decree of
299 adoption until the child has been in the state for not less than
300 fourteen (14) days after the date of the child's birth.

301 Upon the filing of such consent or the completion of such
302 process and the filing of such investigation and report, if
303 required by the court, and the receipt of the preplacement
304 evaluation of the petitioner, if required by Sections 1 through 6
305 of this act, and the presentation of such other evidence as may be
306 desired by the court, if the court determines that it is to the
307 best interests of the child that an interlocutory decree of
308 adoption be entered, the court may thereupon enter an
309 interlocutory decree upon such terms and conditions as may be
310 determined by the court, in its discretion, but including therein
311 that the complete care, custody and control of the child shall be
312 vested in the petitioner or petitioners until further orders of
313 the court and that during such time the child shall be and remain
314 a ward of the court. If the court determines by decree at any
315 time during the pendency of the proceeding that it is not to the

316 best interests of the child that the adoption proceed, the
317 petitioners shall be entitled to at least five (5) days' notice
318 upon their attorneys of record and a hearing with the right of
319 appeal as provided by law from a dismissal of the petition;
320 provided, that the bond perfecting the appeal shall be filed
321 within ten (10) days from the entry of the decree of dismissal and
322 the bond shall be in such amount as the chancellor may determine
323 and supersedeas may be granted by the chancellor or as otherwise
324 provided by law for appeal from final decrees.

325 After the entry of the interlocutory decree and before entry
326 of the final decree, the court may require such further and
327 additional investigation and reports as it may deem proper. The
328 rights of the parties filing the consent or served with process
329 shall be subject to such decree but shall not be divested until
330 entry of the final decree.

331 SECTION 10. Section 93-17-13, Mississippi Code of 1972, is
332 amended as follows:

333 93-17-13. A final decree of adoption shall not be entered
334 unless the provisions of this chapter have been followed and
335 before the expiration of six (6) months from the entry of the
336 interlocutory decree except (a) when a child is a stepchild of a
337 petitioner or is related by blood to the petitioner within the
338 third degree according to the rules of the civil law or in any
339 case in which the chancellor in the exercise of his discretion
340 shall determine from all the proceedings and evidence in said
341 cause that the six-month waiting period is not necessary or
342 required for the benefit of the court, the petitioners or the
343 child to be adopted, and shall so adjudicate in the decree entered
344 in said cause, in either of which cases the final decree may be
345 entered immediately without any delay and without an interlocutory
346 decree, or (b) when the child has resided in the home of any
347 petitioner prior to the granting of the interlocutory decree, in
348 which case the court may, in its discretion, shorten the waiting
349 period by the length of time the child has thus resided.

350 The final decree shall adjudicate, in addition to such other
351 provisions as may be found by the court to be proper for the
352 protection of the interests of the child; and its effect, unless
353 otherwise specifically provided, shall be that (a) the child shall
354 inherit from and through the adopting parents and shall likewise
355 inherit from the other children of the adopting parents to the
356 same extent and under the same conditions as provided for the
357 inheritance between brothers and sisters of the full blood by the
358 laws of descent and distribution of the State of Mississippi, and
359 that the adopting parents and their other children shall inherit
360 from the child, just as if such child had been born to the
361 adopting parents in lawful wedlock; (b) the child and the adopting
362 parents and adoptive kindred are vested with all of the rights,
363 powers, duties and obligations, respectively, as if such child had
364 been born to the adopting parents in lawful wedlock, including all
365 rights existing by virtue of Section 11-7-13, Mississippi Code of
366 1972; provided, however, that inheritance by or from the adopted
367 child shall be governed by subsection (a) above; (c) that the name
368 of the child shall be changed if desired; and (d) that the natural
369 parents and natural kindred of the child shall not inherit by or
370 through the child except as to a natural parent who is the spouse
371 of the adopting parent, and all parental rights of the natural
372 parent, or parents, shall be terminated, except as to a natural
373 parent who is the spouse of the adopting parent. Nothing in this
374 chapter shall restrict the right of any person to dispose of
375 property under a last will and testament.

376 SECTION 11. Sections 1 through 6 of this act shall be
377 codified in Chapter 17 of Title 93, Mississippi Code of 1972.

378 SECTION 12. This act shall take effect and be in force from
379 and after July 1, 1999.