

By: Senator(s) Bean

To: Judiciary

SENATE BILL NO. 2103

1 AN ACT TO AMEND SECTIONS 93-17-5, 93-17-6 AND 93-17-7,
2 MISSISSIPPI CODE OF 1972, TO DELETE THE REVERTERS AND REPEALERS ON
3 THOSE STATUTES PROVIDING PROCEDURES FOR THE DETERMINATION OF
4 RIGHTS OF AN ALLEGED FATHER IN ADOPTION PROCEEDINGS; TO BRING
5 FORWARD SECTION 93-17-8, MISSISSIPPI CODE OF 1972, WHICH PROVIDES
6 A PROCEDURE TO BE FOLLOWED BY THE COURT IN CONTESTED ADOPTION
7 CASES; AND FOR RELATED PURPOSES. BE IT ENACTED BY THE
8 LEGISLATURE OF THE STATE OF MISSISSIPPI:

9
10 SECTION 1. Section 93-17-5, Mississippi Code of 1972, is
11 amended as follows:

12 93-17-5. (1) There shall be made parties to the proceeding
13 by process or by the filing therein of a consent to the adoption
14 proposed in the petition, which consent shall be duly sworn to or
15 acknowledged and executed only by the following persons, but not
16 before seventy-two (72) hours after the birth of said child: (a)
17 the parents, or parent, if only one (1) parent, though either be
18 under the age of twenty-one (21) years; or, (b) in the event both
19 parents are dead, then any two (2) adult kin of the child within
20 the third degree computed according to the civil law, provided
21 that, if one of such kin is in possession of the child, he or she
22 shall join in the petition or be made a party to the suit; or, (c)
23 the guardian ad litem of an abandoned child, upon petition showing
24 that the names of the parents of such child are unknown after
25 diligent search and inquiry by the petitioners. In addition to
26 the above, there shall be made parties to any proceeding to adopt
27 a child, either by process or by the filing of a consent to the
28 adoption proposed in the petition, the following:

29 (i) Those persons having physical custody of such
30 child, except persons having such child as foster parents as a

31 result of placement with them by the Department of Human Services
32 of the State of Mississippi.

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

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

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

43 * * *

44 (3) In the case of a child born out of wedlock, the father
45 shall not have a right to object to an adoption unless he has
46 demonstrated, within the period ending thirty (30) days after the
47 birth of the child, a full commitment to the responsibilities of
48 parenthood. Determination of the rights of the father of a child
49 born out of wedlock may be made in proceedings pursuant to a
50 Petition for Determination of Rights as provided in Section
51 93-17-6.

52 * * *

53 (4) If such consent be not filed, then process shall be had
54 upon the parties as provided by law for process in person or by
55 publication, if they be nonresidents of the state or are not found
56 therein, after diligent search and inquiry, or are unknown after
57 diligent search and inquiry; provided that the court or chancellor
58 in vacation may fix a date in termtime or in vacation to which
59 process may be returnable and shall have power to proceed in
60 termtime or vacation. In any event, if the child is more than
61 fourteen (14) years of age, a consent to the adoption, sworn to or
62 acknowledged by the child, shall also be required or personal
63 service of process shall be had upon the child in the same manner
64 and in the same effect as if it were an adult.

65 SECTION 2. Section 93-17-6, Mississippi Code of 1972, is
66 amended as follows:

67 93-17-6. (1) Any person who would be a necessary party to
68 an adoption proceeding under this chapter and any person alleged
69 or claiming to be the father of a child born out of wedlock who is
70 proposed for adoption or who has been determined to be such by any
71 administrative or judicial procedure (the "alleged father") may
72 file a petition for determination of rights as a preliminary
73 pleading to a petition for adoption in any court which would have
74 jurisdiction and venue of an adoption proceeding. A petition for
75 determination of rights may be filed at any time after the period
76 ending thirty (30) days after the birth of the child. Should
77 competing petitions be filed in two (2) or more courts having
78 jurisdiction and venue, the court in which the first such petition
79 was properly filed shall have jurisdiction over the whole
80 proceeding until its disposition. The prospective adopting
81 parents need not be a party to such petition. Where the child's
82 biological mother has surrendered the child to a home for
83 adoption, the home may represent the biological mother and her
84 interests in this proceeding.

85 (2) The court shall set this petition for hearing as
86 expeditiously as possible allowing not less than ten (10) days'
87 notice from the service or completion of process on the parties to
88 be served.

89 (3) The sole matter for determination under a petition for
90 determination of rights is whether the alleged father has a right
91 to object to an adoption as set out in Section 93-17-5(3).

92 (4) Proof of an alleged father's full commitment to the
93 responsibilities of parenthood would be shown by proof that, in
94 accordance with his means and knowledge of the mother's pregnancy
95 or the child's birth, that he either:

96 (a) Provided financial support, including, but not
97 limited to, the payment of consistent support to the mother during
98 her pregnancy, contributions to the payment of the medical

99 expenses of pregnancy and birth, and contributions of consistent
100 support of the child after birth; that he frequently and
101 consistently visited the child after birth; and that he is now
102 willing and able to assume legal and physical care of the child;
103 or

104 (b) Was willing to provide such support and to visit
105 the child and that he made reasonable attempts to manifest such a
106 parental commitment, but was thwarted in his efforts by the mother
107 or her agents, and that he is now willing and able to assume legal
108 and physical care of the child.

109 (5) If the court determines that the alleged father has not
110 met his full responsibilities of parenthood, it shall enter an
111 order terminating his parental rights and he shall have no right
112 to object to an adoption under Section 93-17-7.

113 (6) If the court determines that the alleged father has met
114 his full responsibilities of parenthood and that he objects to the
115 child's adoption, the court shall set the matter as a contested
116 adoption in accord with Section 93-17-8.

117 (7) A petition for determination of rights may be used to
118 determine the rights of alleged fathers whose identity is unknown
119 or uncertain. In such cases the court shall determine what, if
120 any, notice can be and is to be given such persons.
121 Determinations of rights under the procedure of this section may
122 also be made under a petition for adoption.

123 (8) Petitions for determination of rights shall be
124 considered adoption cases and all subsequent proceedings such as a
125 contested adoption under Section 93-17-8 and the adoption
126 proceeding itself shall be portions of the same file.

127 (9) A petition for determination of rights may not be filed
128 after a final decree of adoption has become incontestable under
129 Section 93-17-15.

130 * * *

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

133 * * *

134 93-17-7. (1) No infant shall be adopted to any person if
135 either parent, after having been summoned, shall appear and object
136 thereto before the making of a decree for adoption, unless it
137 shall be made to appear to the court from evidence touching such
138 matters that the parent so objecting had abandoned or deserted
139 such infant or is mentally, or morally, or otherwise unfit to rear
140 and train it, including, but not limited to, those matters set out
141 in subsection (2) below, in either of which cases the adoption may
142 be decreed notwithstanding the objection of such parent, first
143 considering the welfare of the child, or children, sought to be
144 adopted. Provided, however, the parents shall not be summoned in
145 the adoption proceedings nor have the right to object thereto if
146 the parental rights of the parent or parents have been terminated
147 by the procedure set forth in Sections 93-15-101 through
148 93-15-111, and such termination shall be res judicata on the
149 question of parental abandonment or unfitness in the adoption
150 proceedings. Appointment of a guardian ad litem by the court
151 shall not be mandatory when the adoption is uncontested.

152 (2) An adoption may be allowed over the objection of a
153 parent where:

154 (a) The parent has abused the child. For purposes of
155 this paragraph, abuse means the infliction of physical or mental
156 injury which causes deterioration to the child, sexual abuse,
157 exploitation or overworking of a child to such an extent that his
158 health or moral or emotional well-being is endangered.

159 (b) The parent has not consistently offered to provide
160 reasonably necessary food, clothing, appropriate shelter and
161 treatment for the child. For purposes of this paragraph,
162 treatment means medical care or other health services provided in
163 accordance with the tenets of a well-recognized religious method
164 of healing with a reasonable, proven record of success.

165 (c) The parent suffers from a medical or emotional
166 illness, mental deficiency, behavior or conduct disorder, severe

167 physical disability, substance abuse or chemical dependency which
168 makes him unable or unwilling to provide an adequate permanent
169 home for the child at the present time or in the reasonably near
170 future based upon expert opinion or based upon an established
171 pattern of behavior.

172 (d) Viewed in its entirety, the parent's past or
173 present conduct, including his criminal convictions, would pose a
174 risk of substantial harm to the physical, mental or emotional
175 health of the child.

176 (e) The parent has engaged in acts or omissions
177 permitting termination of parental rights under Section 93-15-103,
178 subsections (2) and (3)(a), (b), (d) or (e).

179 (f) The enumeration of conduct or omissions in this
180 subsection (2) in no way limits the court's power to such
181 enumerated conduct or omissions in determining a parent's
182 abandonment or desertion of the child or unfitness under
183 subparagraph (1) above.

184 * * *

185 SECTION 4. Section 93-17-8, Mississippi Code of 1972, is
186 brought forward as follows:

187 93-17-8. (1) Whenever an adoption becomes a contested
188 matter, whether after a hearing on a petition for determination of
189 rights under Section 92-17-6 or otherwise, the court:

190 (a) Shall, on motion of any party or on its own motion,
191 issue an order for immediate blood or tissue sampling in
192 accordance with the provisions of Section 93-9-21 et seq., if
193 paternity is at issue. The court shall order an expedited report
194 of such testing and shall hold the hearing resolving this matter
195 at the earliest time possible.

196 (b) Shall appoint a guardian ad litem to represent the
197 child. Such guardian ad litem shall be an attorney, however his
198 duties are as guardian ad litem and not as attorney for the child.

199 The reasonable costs of the guardian ad litem shall be taxed as
200 costs of court. Neither the child nor anyone purporting to act on

201 his behalf may waive the appointment of a guardian ad litem.

202 (c) Shall determine first whether or not the objecting
203 parent is entitled to so object under the criteria of Section
204 93-17-7 and then shall determine the custody of the child in
205 accord with the best interests of the child and the rights of the
206 parties as established by the hearings and judgments.

207 (d) Shall schedule all hearings concerning the
208 contested adoption as expeditiously as possible for prompt
209 conclusion of the matter.

210 (2) In determining the custody of the child after a finding
211 that the adoption will not be granted, the fact of the surrender
212 of the child for adoption by a parent shall not be taken as any
213 evidence of that parent's abandonment or desertion of the child or
214 of that parent's unfitness as a parent.

215 (3) In contested adoptions arising through petitions for
216 determination of rights where the prospective adopting parents
217 were not parties to that proceeding, they need not be made parties
218 to the contested adoption until there has been a ruling that the
219 objecting parent is not entitled to enter a valid objection to the
220 adoption. At that point the prospective adopting parents shall be
221 made parties by joinder which shall show their suitability to be
222 adopting parents as would a petition for adoption. The identity
223 and suitability of the prospective adopting parents shall be made
224 known to the court and the guardian ad litem, but shall not be
225 made known to other parties to the proceeding unless the court
226 determines that the interests of justice or the best interests of
227 the child require it.

228 (4) No birth parent or alleged parent shall be permitted to
229 contradict statements given in a proceeding for the adoption of
230 their child in any other proceeding concerning that child or his
231 ancestry.

232 (5) Appointment of a guardian ad litem is not required in
233 any proceeding under this chapter except as provided in subsection
234 (1)(b) above and except for the guardian ad litem needed for an

235 abandoned child. It shall not be necessary for a guardian ad
236 litem to be appointed where the chancery judge presiding in the
237 adoption proceeding deems it unnecessary and no adoption agency is
238 involved in the proceeding. No final decree of adoption
239 heretofore granted shall be set aside or modified because a
240 guardian ad litem was not appointed unless as the result of a
241 direct appeal not now barred.

242 (6) The provisions of Chapter 15 of this Title 93,
243 Mississippi Code of 1972, are not applicable to proceedings under
244 this chapter except as specifically provided by reference herein.

245 (7) The court may order a child's birth father, identified
246 as such in the proceedings, to reimburse the Department of Human
247 Services, the foster parents, the adopting parents, the home, any
248 other agency or person who has assumed liability for such child,
249 all or part of the costs of the medical expenses incurred for the
250 mother and the child in connection with the birth of the child, as
251 well as reasonable support for the child after his birth.

252 SECTION 5. This act shall take effect and be in force from
253 and after June 30, 1999.