

By: Senator(s) Bean

To: Judiciary

SENATE BILL NO. 2103
(As Passed the Senate)

1 AN ACT TO AMEND SECTIONS 93-17-5, 93-17-6 AND 93-17-7,
2 MISSISSIPPI CODE OF 1972, TO EXTEND 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:

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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 **[Until June 30, 2001, this subsection (3) shall read as**
44 **follows:]**

45 (3) In the case of a child born out of wedlock, the father
46 shall not have a right to object to an adoption unless he has
47 demonstrated, within the period ending thirty (30) days after the
48 birth of the child, a full commitment to the responsibilities of
49 parenthood. Determination of the rights of the father of a child
50 born out of wedlock may be made in proceedings pursuant to a
51 Petition for Determination of Rights as provided in Section
52 93-17-6.

53 **[From and after July 1, 2001, this subsection (3) shall read**
54 **as follows:]**

55 (3) In the case of a child born out of wedlock, the father
56 shall not be deemed to be a parent for the purpose of this
57 chapter, and no reference shall be made to the illegitimacy of
58 such child.

59 (4) If such consent be not filed, then process shall be had
60 upon the parties as provided by law for process in person or by
61 publication, if they be nonresidents of the state or are not found
62 therein, after diligent search and inquiry, or are unknown after
63 diligent search and inquiry; provided that the court or chancellor
64 in vacation may fix a date in termtime or in vacation to which

65 process may be returnable and shall have power to proceed in
66 termtime or vacation. In any event, if the child is more than
67 fourteen (14) years of age, a consent to the adoption, sworn to or
68 acknowledged by the child, shall also be required or personal
69 service of process shall be had upon the child in the same manner
70 and in the same effect as if it were an adult.

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

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

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

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

98 (4) Proof of an alleged father's full commitment to the

99 responsibilities of parenthood would be shown by proof that, in
100 accordance with his means and knowledge of the mother's pregnancy
101 or the child's birth, that he either:

102 (a) Provided financial support, including, but not
103 limited to, the payment of consistent support to the mother during
104 her pregnancy, contributions to the payment of the medical
105 expenses of pregnancy and birth, and contributions of consistent
106 support of the child after birth; that he frequently and
107 consistently visited the child after birth; and that he is now
108 willing and able to assume legal and physical care of the child;
109 or

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

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

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

123 (7) A petition for determination of rights may be used to
124 determine the rights of alleged fathers whose identity is unknown
125 or uncertain. In such cases the court shall determine what, if
126 any, notice can be and is to be given such persons.
127 Determinations of rights under the procedure of this section may
128 also be made under a petition for adoption.

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

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

136 (10) This Section 93-17-6 shall stand repealed from and after
137 July 1, 2001.

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

140 **[Until June 30, 2001, this section shall read as follows:]**

141 93-17-7. (1) No infant shall be adopted to any person if
142 either parent, after having been summoned, shall appear and object
143 thereto before the making of a decree for adoption, unless it
144 shall be made to appear to the court from evidence touching such
145 matters that the parent so objecting had abandoned or deserted
146 such infant or is mentally, or morally, or otherwise unfit to rear
147 and train it, including, but not limited to, those matters set out
148 in subsection (2) below, in either of which cases the adoption may
149 be decreed notwithstanding the objection of such parent, first
150 considering the welfare of the child, or children, sought to be
151 adopted. Provided, however, the parents shall not be summoned in
152 the adoption proceedings nor have the right to object thereto if
153 the parental rights of the parent or parents have been terminated
154 by the procedure set forth in Sections 93-15-101 through
155 93-15-111, and such termination shall be res judicata on the
156 question of parental abandonment or unfitness in the adoption
157 proceedings. Appointment of a guardian ad litem by the court
158 shall not be mandatory when the adoption is uncontested.

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

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

166 (b) The parent has not consistently offered to provide

167 reasonably necessary food, clothing, appropriate shelter and
168 treatment for the child. For purposes of this paragraph,
169 treatment means medical care or other health services provided in
170 accordance with the tenets of a well-recognized religious method
171 of healing with a reasonable, proven record of success.

172 (c) The parent suffers from a medical or emotional
173 illness, mental deficiency, behavior or conduct disorder, severe
174 physical disability, substance abuse or chemical dependency which
175 makes him unable or unwilling to provide an adequate permanent
176 home for the child at the present time or in the reasonably near
177 future based upon expert opinion or based upon an established
178 pattern of behavior.

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

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

186 (f) The enumeration of conduct or omissions in this
187 subsection (2) in no way limits the court's power to such
188 enumerated conduct or omissions in determining a parent's
189 abandonment or desertion of the child or unfitness under
190 subparagraph (1) above.

191 **[From and after July 1, 2001, this section shall read as**
192 **follows.]**

193 No infant shall be adopted to any person if either parent,
194 after having been summoned, shall appear and object thereto before
195 the making of a decree for adoption, unless it shall be made to
196 appear to the court from evidence touching such matters that the
197 parent so objecting had abandoned or deserted such infant or is
198 mentally, or morally, or otherwise unfit to rear and train it,
199 including, but not limited to, being within any of the grounds
200 requiring termination of parental rights as set forth in

201 subsections (2) and (3)(a), (b), (d) or (e) of Section 93-15-103
202 in either of which cases the adoption may be decreed
203 notwithstanding the objection of such parent, first considering
204 the welfare of the child, or children, sought to be adopted.
205 Provided, however, the parents shall not be summoned in the
206 adoption proceedings nor have the right to object thereto if the
207 parental rights of the parent or parents have been terminated by
208 the procedure set forth in Sections 93-15-101 through 93-15-111,
209 and such termination shall be res judicata on the question of
210 parental abandonment or unfitness in the adoption proceedings.

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

213 93-17-8. (1) Whenever an adoption becomes a contested
214 matter, whether after a hearing on a petition for determination of
215 rights under Section 92-17-6 or otherwise, the court:

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

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

225 The reasonable costs of the guardian ad litem shall be taxed as
226 costs of court. Neither the child nor anyone purporting to act on
227 his behalf may waive the appointment of a guardian ad litem.

228 (c) Shall determine first whether or not the objecting
229 parent is entitled to so object under the criteria of Section
230 93-17-7 and then shall determine the custody of the child in
231 accord with the best interests of the child and the rights of the
232 parties as established by the hearings and judgments.

233 (d) Shall schedule all hearings concerning the
234 contested adoption as expeditiously as possible for prompt

235 conclusion of the matter.

236 (2) In determining the custody of the child after a finding
237 that the adoption will not be granted, the fact of the surrender
238 of the child for adoption by a parent shall not be taken as any
239 evidence of that parent's abandonment or desertion of the child or
240 of that parent's unfitness as a parent.

241 (3) In contested adoptions arising through petitions for
242 determination of rights where the prospective adopting parents
243 were not parties to that proceeding, they need not be made parties
244 to the contested adoption until there has been a ruling that the
245 objecting parent is not entitled to enter a valid objection to the
246 adoption. At that point the prospective adopting parents shall be
247 made parties by joinder which shall show their suitability to be
248 adopting parents as would a petition for adoption. The identity
249 and suitability of the prospective adopting parents shall be made
250 known to the court and the guardian ad litem, but shall not be
251 made known to other parties to the proceeding unless the court
252 determines that the interests of justice or the best interests of
253 the child require it.

254 (4) No birth parent or alleged parent shall be permitted to
255 contradict statements given in a proceeding for the adoption of
256 their child in any other proceeding concerning that child or his
257 ancestry.

258 (5) Appointment of a guardian ad litem is not required in
259 any proceeding under this chapter except as provided in subsection
260 (1)(b) above and except for the guardian ad litem needed for an
261 abandoned child. It shall not be necessary for a guardian ad
262 litem to be appointed where the chancery judge presiding in the
263 adoption proceeding deems it unnecessary and no adoption agency is
264 involved in the proceeding. No final decree of adoption
265 heretofore granted shall be set aside or modified because a
266 guardian ad litem was not appointed unless as the result of a
267 direct appeal not now barred.

268 (6) The provisions of Chapter 15 of this Title 93,

269 Mississippi Code of 1972, are not applicable to proceedings under
270 this chapter except as specifically provided by reference herein.

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

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