

By: Senator(s) Bean

To: Judiciary

SENATE BILL NO. 2103
(As Sent to Governor)

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; AND FOR
5 RELATED PURPOSES. BE IT ENACTED BY THE LEGISLATURE OF THE STATE
6 OF MISSISSIPPI:

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

10 93-17-5. (1) There shall be made parties to the proceeding
11 by process or by the filing therein of a consent to the adoption
12 proposed in the petition, which consent shall be duly sworn to or
13 acknowledged and executed only by the following persons, but not
14 before seventy-two (72) hours after the birth of said child: (a)
15 the parents, or parent, if only one (1) parent, though either be
16 under the age of twenty-one (21) years; or, (b) in the event both
17 parents are dead, then any two (2) adult kin of the child within
18 the third degree computed according to the civil law, provided
19 that, if one of such kin is in possession of the child, he or she
20 shall join in the petition or be made a party to the suit; or, (c)
21 the guardian ad litem of an abandoned child, upon petition showing
22 that the names of the parents of such child are unknown after
23 diligent search and inquiry by the petitioners. In addition to
24 the above, there shall be made parties to any proceeding to adopt
25 a child, either by process or by the filing of a consent to the
26 adoption proposed in the petition, the following:

27 (i) Those persons having physical custody of such
28 child, except persons having such child as foster parents as a
29 result of placement with them by the Department of Human Services

30 of the State of Mississippi.

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

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

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

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

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

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

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

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

68 and in the same effect as if it were an adult.

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

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

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

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

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

100 (a) Provided financial support, including, but not
101 limited to, the payment of consistent support to the mother during

102 her pregnancy, contributions to the payment of the medical
103 expenses of pregnancy and birth, and contributions of consistent
104 support of the child after birth; that he frequently and
105 consistently visited the child after birth; and that he is now
106 willing and able to assume legal and physical care of the child;
107 or

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

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

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

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

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

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

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

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

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

139 93-17-7. (1) No infant shall be adopted to any person if
140 either parent, after having been summoned, shall appear and object
141 thereto before the making of a decree for adoption, unless it
142 shall be made to appear to the court from evidence touching such
143 matters that the parent so objecting had abandoned or deserted
144 such infant or is mentally, or morally, or otherwise unfit to rear
145 and train it, including, but not limited to, those matters set out
146 in subsection (2) below, in either of which cases the adoption may
147 be decreed notwithstanding the objection of such parent, first
148 considering the welfare of the child, or children, sought to be
149 adopted. Provided, however, the parents shall not be summoned in
150 the adoption proceedings nor have the right to object thereto if
151 the parental rights of the parent or parents have been terminated
152 by the procedure set forth in Sections 93-15-101 through
153 93-15-111, and such termination shall be res judicata on the
154 question of parental abandonment or unfitness in the adoption
155 proceedings. Appointment of a guardian ad litem by the court
156 shall not be mandatory when the adoption is uncontested or where
157 all necessary parties have been properly summoned and no party has
158 filed an objection to the proceeding.

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. This act shall take effect and be in force from
212 and after June 30, 1999.