

By: Senator(s) Nunnelee

To: Judiciary

## SENATE BILL NO. 2907

1 AN ACT TO AMEND SECTIONS 93-17-7 and 93-17-8, MISSISSIPPI  
2 CODE OF 1972, TO CLARIFY THE CIRCUMSTANCES UNDER WHICH APPOINTMENT  
3 OF A GUARDIAN AD LITEM IS REQUIRED IN AN ADOPTION PROCEEDING; TO  
4 AMEND SECTION 93-17-6, MISSISSIPPI CODE OF 1972, TO CLARIFY THE  
5 NOTICE DUE UNKNOWN FATHERS IN A PROCEEDING UPON A PETITION FOR  
6 DETERMINATION OF RIGHTS; AND FOR RELATED PURPOSES. BE IT  
7 ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

8  
9 SECTION 1. Section 93-17-7, Mississippi Code of 1972, is  
10 amended as follows:

11 **[Until June 30, 1999, this section shall read as follows:]**

12 93-17-7. (1) No infant shall be adopted to any person if  
13 either parent, after having been summoned, shall appear and object  
14 thereto before the making of a decree for adoption, unless it  
15 shall be made to appear to the court from evidence touching such  
16 matters that the parent so objecting had abandoned or deserted  
17 such infant or is mentally, or morally, or otherwise unfit to rear  
18 and train it, including, but not limited to, those matters set out  
19 in subsection (2) below, in either of which cases the adoption may  
20 be decreed notwithstanding the objection of such parent, first  
21 considering the welfare of the child, or children, sought to be  
22 adopted. Provided, however, the parents shall not be summoned in  
23 the adoption proceedings nor have the right to object thereto if  
24 the parental rights of the parent or parents have been terminated  
25 by the procedure set forth in Sections 93-15-101 through  
26 93-15-111, and such termination shall be res judicata on the  
27 question of parental abandonment or unfitness in the adoption  
28 proceedings. Appointment of a guardian ad litem by the court  
29 shall not be mandatory when the adoption is uncontested.

30 (2) An adoption may be allowed over the objection of a

31 parent where:

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

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

43 (c) The parent suffers from a medical or emotional  
44 illness, mental deficiency, behavior or conduct disorder, severe  
45 physical disability, substance abuse or chemical dependency which  
46 makes him unable or unwilling to provide an adequate permanent  
47 home for the child at the present time or in the reasonably near  
48 future based upon expert opinion or based upon an established  
49 pattern of behavior.

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

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

57 (f) The enumeration of conduct or omissions in this  
58 subsection (2) in no way limits the court's power to such  
59 enumerated conduct or omissions in determining a parent's  
60 abandonment or desertion of the child or unfitness under  
61 subparagraph (1) above.

62

63 **[From and after July 1, 1999, this section shall read as**  
64 **follows.]**

65           No infant shall be adopted to any person if either parent,  
66 after having been summoned, shall appear and object thereto before  
67 the making of a decree for adoption, unless it shall be made to  
68 appear to the court from evidence touching such matters that the  
69 parent so objecting had abandoned or deserted such infant or is  
70 mentally, or morally, or otherwise unfit to rear and train it,  
71 including, but not limited to, being within any of the grounds  
72 requiring termination of parental rights as set forth in \* \* \*  
73 Section 93-15-103, in either of which cases the adoption may be  
74 decreed notwithstanding the objection of such parent, first  
75 considering the welfare of the child, or children, sought to be  
76 adopted. Provided, however, the parents shall not be summoned in  
77 the adoption proceedings nor have the right to object thereto if  
78 the parental rights of the parent or parents have been terminated  
79 by the procedure set forth in Sections 93-15-101 through  
80 93-15-111, and such termination shall be res judicata on the  
81 question of parental abandonment or unfitness in the adoption  
82 proceedings.

83           SECTION 2. Section 93-17-8, Mississippi Code of 1972, is  
84 brought forward as follows:

85           93-17-8. (1) Whenever an adoption becomes a contested  
86 matter, whether after a hearing on a petition for determination of  
87 rights under Section 93-17-6 or otherwise, the court:

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

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

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

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

100 (c) Shall determine first whether or not the objecting  
101 parent is entitled to so object under the criteria of Section  
102 93-17-7 and then shall determine the custody of the child in  
103 accord with the best interests of the child and the rights of the  
104 parties as established by the hearings and judgments.

105 (d) Shall schedule all hearings concerning the  
106 contested adoption as expeditiously as possible for prompt  
107 conclusion of the matter.

108 (2) In determining the custody of the child after a finding  
109 that the adoption will not be granted, the fact of the surrender  
110 of the child for adoption by a parent shall not be taken as any  
111 evidence of that parent's abandonment or desertion of the child or  
112 of that parent's unfitness as a parent.

113 (3) In contested adoptions arising through petitions for  
114 determination of rights where the prospective adopting parents  
115 were not parties to that proceeding, they need not be made parties  
116 to the contested adoption until there has been a ruling that the  
117 objecting parent is not entitled to enter a valid objection to the  
118 adoption. At that point the prospective adopting parents shall be  
119 made parties by joinder which shall show their suitability to be  
120 adopting parents as would a petition for adoption. The identity  
121 and suitability of the prospective adopting parents shall be made  
122 known to the court and the guardian ad litem, but shall not be  
123 made known to other parties to the proceeding unless the court  
124 determines that the interests of justice or the best interests of  
125 the child require it.

126 (4) No birth parent or alleged parent shall be permitted to  
127 contradict statements given in a proceeding for the adoption of  
128 their child in any other proceeding concerning that child or his  
129 ancestry.

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

133 abandoned child. \* \* \* No final decree of adoption heretofore  
134 granted shall be set aside or modified because a guardian ad litem  
135 was not appointed unless as the result of a direct appeal not now  
136 barred.

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

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

147 SECTION 3. Section 93-17-6, Mississippi Code of 1972, is  
148 amended as follows:

149 93-17-6. (1) Any person who would be a necessary party to  
150 an adoption proceeding under this chapter and any person alleged  
151 or claiming to be the father of a child born out of wedlock who is  
152 proposed for adoption or who has been determined to be such by any  
153 administrative or judicial procedure (the "alleged father") may  
154 file a petition for determination of rights as a preliminary  
155 pleading to a petition for adoption in any court which would have  
156 jurisdiction and venue of an adoption proceeding. A petition for  
157 determination of rights may be filed at any time after the period  
158 ending thirty (30) days after the birth of the child. Should  
159 competing petitions be filed in two (2) or more courts having  
160 jurisdiction and venue, the court in which the first such petition  
161 was properly filed shall have jurisdiction over the whole  
162 proceeding until its disposition. The prospective adopting  
163 parents need not be a party to such petition. Where the child's  
164 biological mother has surrendered the child to a home for  
165 adoption, the home may represent the biological mother and her  
166 interests in this proceeding.

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

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

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

178 (a) Provided financial support, including, but not  
179 limited to, the payment of consistent support to the mother during  
180 her pregnancy, contributions to the payment of the medical  
181 expenses of pregnancy and birth, and contributions of consistent  
182 support of the child after birth; that he frequently and  
183 consistently visited the child after birth; and that he is now  
184 willing and able to assume legal and physical care of the child;  
185 or

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

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

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

199 (7) A petition for determination of rights may be used to  
200 determine the rights of alleged fathers whose identity is unknown

201 or uncertain. In such cases the court shall determine what, if  
202 any, notice can be and is to be given such persons, including, but  
203 not limited to, notice by certified mail or by publication.

204 Determinations of rights under the procedure of this section may  
205 also be made under a petition for adoption.

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

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

213 (10) This Section 93-17-6 shall stand repealed from and  
214 after July 1, 2000.

215 SECTION 4. This act shall take effect and be in force from  
216 and after July 1, 1999.