

REPORT OF CONFERENCE COMMITTEE

MR. PRESIDENT AND MR. SPEAKER:

We, the undersigned conferees, have had under consideration the amendments to the following entitled BILL:

S.B. No. 2103: Procedures for determination of rights of an alleged father in adoption proceedings; revise repealers on.

We, therefore, respectfully submit the following report and recommendation:

1. That the House recede from its Amendment No. 1.

2. That the Senate and House adopt the following amendment:

Amend by striking all after the enacting clause and inserting in lieu thereof the following:

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

9 93-17-5. (1) There shall be made parties to the proceeding
10 by process or by the filing therein of a consent to the adoption
11 proposed in the petition, which consent shall be duly sworn to or
12 acknowledged and executed only by the following persons, but not
13 before seventy-two (72) hours after the birth of said child: (a)
14 the parents, or parent, if only one (1) parent, though either be
15 under the age of twenty-one (21) years; or, (b) in the event both
16 parents are dead, then any two (2) adult kin of the child within
17 the third degree computed according to the civil law, provided
18 that, if one of such kin is in possession of the child, he or she
19 shall join in the petition or be made a party to the suit; or, (c)
20 the guardian ad litem of an abandoned child, upon petition showing
21 that the names of the parents of such child are unknown after
22 diligent search and inquiry by the petitioners. In addition to
23 the above, there shall be made parties to any proceeding to adopt
24 a child, either by process or by the filing of a consent to the
25 adoption proposed in the petition, the following:

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

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

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

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

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

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

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

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

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

65 acknowledged by the child, shall also be required or personal
66 service of process shall be had upon the child in the same manner
67 and in the same effect as if it were an adult.

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

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

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

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

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

99 (a) Provided financial support, including, but not

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

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

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

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

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

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

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

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

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

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

138 93-17-7. (1) No infant shall be adopted to any person if
139 either parent, after having been summoned, shall appear and object
140 thereto before the making of a decree for adoption, unless it
141 shall be made to appear to the court from evidence touching such
142 matters that the parent so objecting had abandoned or deserted
143 such infant or is mentally, or morally, or otherwise unfit to rear
144 and train it, including, but not limited to, those matters set out
145 in subsection (2) below, in either of which cases the adoption may
146 be decreed notwithstanding the objection of such parent, first
147 considering the welfare of the child, or children, sought to be
148 adopted. Provided, however, the parents shall not be summoned in
149 the adoption proceedings nor have the right to object thereto if
150 the parental rights of the parent or parents have been terminated
151 by the procedure set forth in Sections 93-15-101 through
152 93-15-111, and such termination shall be res judicata on the
153 question of parental abandonment or unfitness in the adoption
154 proceedings. Appointment of a guardian ad litem by the court
155 shall not be mandatory when the adoption is uncontested or where
156 all necessary parties have been properly summoned and no party has
157 filed an objection to the proceeding.

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

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

165 (b) The parent has not consistently offered to provide
166 reasonably necessary food, clothing, appropriate shelter and
167 treatment for the child. For purposes of this paragraph,
168 treatment means medical care or other health services provided in
169 accordance with the tenets of a well-recognized religious method

170 of healing with a reasonable, proven record of success.

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

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

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

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

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

192 No infant shall be adopted to any person if either parent,
193 after having been summoned, shall appear and object thereto before
194 the making of a decree for adoption, unless it shall be made to
195 appear to the court from evidence touching such matters that the
196 parent so objecting had abandoned or deserted such infant or is
197 mentally, or morally, or otherwise unfit to rear and train it,
198 including, but not limited to, being within any of the grounds
199 requiring termination of parental rights as set forth in
200 subsections (2) and (3)(a), (b), (d) or (e) of Section 93-15-103
201 in either of which cases the adoption may be decreed
202 notwithstanding the objection of such parent, first considering
203 the welfare of the child, or children, sought to be adopted.
204 Provided, however, the parents shall not be summoned in the

205 adoption proceedings nor have the right to object thereto if the
206 parental rights of the parent or parents have been terminated by
207 the procedure set forth in Sections 93-15-101 through 93-15-111,
208 and such termination shall be res judicata on the question of
209 parental abandonment or unfitness in the adoption proceedings.

210 SECTION 4. This act shall take effect and be in force from
211 and after June 30, 1999.

**Further, amend by striking the title in its entirety and
inserting in lieu thereof the following:**

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.

CONFEREES FOR THE SENATE:

CONFEREES FOR THE HOUSE:

X _____
Bennie L. Turner

X _____
Ed Perry

X _____
Tommy Dickerson

X _____
James C. Simpson, Jr.

X _____
Jim Bean

X _____
Reta Holden