

*****Pending*****

AMENDMENT No. 1 PROPOSED TO

House Bill NO. 546

By Senator(s) Committee

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

94 (3) The sole matter for determination under a petition for
95 determination of rights is whether the alleged father has a right

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96 to object to an adoption as set out in Section 93-17-5(3).

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

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

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

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

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

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

128 (8) Petitions for determination of rights shall be

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

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

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

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

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

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

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

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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

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

212 93-17-8. (1) Whenever an adoption becomes a contested
213 matter, whether after a hearing on a petition for determination of
214 rights under Section 92-17-6 or otherwise, the court:

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

221 (b) Shall appoint a guardian ad litem to represent the
222 child. Such guardian ad litem shall be an attorney, however his
223 duties are as guardian ad litem and not as attorney for the child.
224 The reasonable costs of the guardian ad litem shall be taxed as
225 costs of court. Neither the child nor anyone purporting to act on
226 his behalf may waive the appointment of a guardian ad litem.

227 (c) Shall determine first whether or not the objecting

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228 parent is entitled to so object under the criteria of Section
229 93-17-7 and then shall determine the custody of the child in
230 accord with the best interests of the child and the rights of the
231 parties as established by the hearings and judgments.

232 (d) Shall schedule all hearings concerning the
233 contested adoption as expeditiously as possible for prompt
234 conclusion of the matter.

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

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

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

257 (5) Appointment of a guardian ad litem is not required in
258 any proceeding under this chapter except as provided in subsection
259 (1)(b) above and except for the guardian ad litem needed for an
260 abandoned child. It shall not be necessary for a guardian ad

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261 litem to be appointed where the chancery judge presiding in the
262 adoption proceeding deems it unnecessary and no adoption agency is
263 involved in the proceeding. No final decree of adoption
264 heretofore granted shall be set aside or modified because a
265 guardian ad litem was not appointed unless as the result of a
266 direct appeal not now barred.

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

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

277 SECTION 5. This act shall take effect and be in force from
278 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; 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.