

By: Guice

To: Judiciary A

HOUSE BILL NO. 131

1 AN ACT TO AMEND SECTIONS 93-17-5 AND 93-17-8, MISSISSIPPI
2 CODE OF 1972, TO PROVIDE THAT APPOINTMENT OF A GUARDIAN AD LITEM
3 IS NOT REQUIRED WHEN A CHILD IS TO BE ADOPTED BY CERTAIN
4 RELATIVES; AND FOR RELATED PURPOSES.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

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

8 93-17-5. (1) There shall be made parties to the proceeding
9 by process or by the filing therein of a consent to the adoption
10 proposed in the petition, which consent shall be duly sworn to or
11 acknowledged and executed only by the following persons, but not
12 before seventy-two (72) hours after the birth of said child: (a)
13 the parents, or parent, if only one (1) parent, though either be
14 under the age of twenty-one (21) years; or, (b) in the event both
15 parents are dead, then any two (2) adult kin of the child within
16 the third degree computed according to the civil law, provided
17 that, if one of such kin is in possession of the child, he or she
18 shall join in the petition or be made a party to the suit; or, (c)
19 the guardian ad litem of an abandoned child, upon petition showing
20 that the names of the parents of such child are unknown after
21 diligent search and inquiry by the petitioners. In addition to
22 the above, there shall be made parties to any proceeding to adopt

23 a child, either by process or by the filing of a consent to the
24 adoption proposed in the petition, the following:

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

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

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

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

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

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

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

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

54 such child.

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

67 (5) If the child is to be adopted by a grandparent, sibling,
68 uncle or aunt a guardian ad litem does not have to be appointed.

69 SECTION 2. Section 93-17-8, Mississippi Code of 1972, is
70 amended as follows:

71 93-17-8. (1) Whenever an adoption becomes a contested
72 matter, whether after a hearing on a petition for determination of
73 rights under Section 92-17-6 or otherwise, the court:

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

80 (b) Shall appoint a guardian ad litem to represent the
81 child. Such guardian ad litem shall be an attorney, however his

82 duties are as guardian ad litem and not as attorney for the child.

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

86 (c) Shall determine first whether or not the objecting
87 parent is entitled to so object under the criteria of Section
88 93-17-7 and then shall determine the custody of the child in
89 accord with the best interests of the child and the rights of the
90 parties as established by the hearings and judgments.

91 (d) Shall schedule all hearings concerning the
92 contested adoption as expeditiously as possible for prompt
93 conclusion of the matter.

94 (2) In determining the custody of the child after a finding
95 that the adoption will not be granted, the fact of the surrender
96 of the child for adoption by a parent shall not be taken as any
97 evidence of that parent's abandonment or desertion of the child or
98 of that parent's unfitness as a parent.

99 (3) In contested adoptions arising through petitions for
100 determination of rights where the prospective adopting parents
101 were not parties to that proceeding, they need not be made parties
102 to the contested adoption until there has been a ruling that the
103 objecting parent is not entitled to enter a valid objection to the
104 adoption. At that point the prospective adopting parents shall be
105 made parties by joinder which shall show their suitability to be
106 adopting parents as would a petition for adoption. The identity
107 and suitability of the prospective adopting parents shall be made
108 known to the court and the guardian ad litem, but shall not be
109 made known to other parties to the proceeding unless the court

110 determines that the interests of justice or the best interests of
111 the child require it.

112 (4) No birth parent or alleged parent shall be permitted to
113 contradict statements given in a proceeding for the adoption of
114 their child in any other proceeding concerning that child or his
115 ancestry.

116 (5) Appointment of a guardian ad litem is not required in
117 any proceeding under this chapter except as provided in subsection
118 (1)(b) above and except for the guardian ad litem needed for an
119 abandoned child. Appointment of a guardian ad litem is not
120 required if the child is to be adopted by a grandparent, sibling,
121 uncle or aunt. It shall not be necessary for a guardian ad litem
122 to be appointed where the chancery judge presiding in the adoption
123 proceeding deems it unnecessary and no adoption agency is involved
124 in the proceeding. No final decree of adoption heretofore granted
125 shall be set aside or modified because a guardian ad litem was not
126 appointed unless as the result of a direct appeal not now barred.

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

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

137 SECTION 3. This act shall take effect and be in force from

138 and after July 1, 2000.