

By: Nunnelee

To: Judiciary

SENATE BILL NO. 2186

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 ALLOW A COUNTY TO PAY THE FEE IN CERTAIN PROCEEDINGS; TO AMEND  
 5 SECTION 93-17-6, MISSISSIPPI CODE OF 1972, TO CLARIFY THE NOTICE  
 6 DUE UNKNOWN FATHERS IN A PROCEEDING UPON A PETITION FOR  
 7 DETERMINATION OF RIGHTS; AND FOR RELATED PURPOSES.

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

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

11 \* \* \*

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 or where  
30 all necessary parties have been properly summoned and no party has  
31 filed an objection to the proceeding.

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

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

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

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

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

55 health of the child.

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

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

64 \* \* \*

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

67 93-17-8. (1) Whenever an adoption becomes a contested  
68 matter, whether after a hearing on a petition for determination of  
69 rights under Section 93-17-6 or otherwise, the court:

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

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

79 The reasonable costs of the guardian ad litem shall be taxed as  
80 costs of court unless the chancellor, in his discretion, shall  
81 order those costs paid by the county, which order may be entered  
82 at any time. Neither the child nor anyone purporting to act on

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

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

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

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

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

110 (4) No birth parent or alleged parent shall be permitted to

111 contradict statements given in a proceeding for the adoption of  
112 their child in any other proceeding concerning that child or his  
113 ancestry.

114 (5) Appointment of a guardian ad litem is not automatically  
115 required in any proceeding under this chapter except (a) as  
116 provided in subsection (1)(b) above; \* \* \* (b) for an abandoned  
117 child; \* \* \* or (c) where an adoption agency is involved in the  
118 proceeding. No final decree of adoption heretofore granted shall  
119 be set aside or modified because a guardian ad litem was not  
120 appointed unless as the result of a direct appeal not now barred.

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

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

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

133 93-17-6. (1) Any person who would be a necessary party to  
134 an adoption proceeding under this chapter and any person alleged  
135 or claiming to be the father of a child born out of wedlock who is  
136 proposed for adoption or who has been determined to be such by any  
137 administrative or judicial procedure (the "alleged father") may  
138 file a petition for determination of rights as a preliminary

139 pleading to a petition for adoption in any court which would have  
140 jurisdiction and venue of an adoption proceeding. A petition for  
141 determination of rights may be filed at any time after the period  
142 ending thirty (30) days after the birth of the child. Should  
143 competing petitions be filed in two (2) or more courts having  
144 jurisdiction and venue, the court in which the first such petition  
145 was properly filed shall have jurisdiction over the whole  
146 proceeding until its disposition. The prospective adopting  
147 parents need not be a party to such petition. Where the child's  
148 biological mother has surrendered the child to a home for  
149 adoption, the home may represent the biological mother and her  
150 interests in this proceeding.

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

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

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

162 (a) Provided financial support, including, but not  
163 limited to, the payment of consistent support to the mother during  
164 her pregnancy, contributions to the payment of the medical  
165 expenses of pregnancy and birth, and contributions of consistent  
166 support of the child after birth; that he frequently and

167 consistently visited the child after birth; and that he is now  
168 willing and able to assume legal and physical care of the child;  
169 or

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

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

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

183 (7) A petition for determination of rights may be used to  
184 determine the rights of alleged fathers whose identity is unknown  
185 or uncertain. In such cases the court shall determine what, if  
186 any, notice can be and is to be given such persons, including, but  
187 not limited to, notice by certified mail or by publication.  
188 Determinations of rights under the procedure of this section may  
189 also be made under a petition for adoption.

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

194 (9) A petition for determination of rights may not be filed

195 after a final decree of adoption has become incontestable under  
196 Section 93-17-15.

197 \* \* \*

198 SECTION 4. This act shall take effect and be in force from  
199 and after July 1, 2000.