

By: Representative Clark

To: Judiciary A

HOUSE BILL NO. 397

1 AN ACT TO AMEND SECTIONS 93-17-5, 93-17-13, 93-17-25,  
 2 93-17-205, 93-17-207, 93-17-209, 93-17-215, 93-17-217 AND  
 3 93-17-219, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT AN ADOPTED  
 4 CHILD SHALL HAVE THE RIGHT TO KNOW THE IDENTITY OF THE BIOLOGICAL  
 5 PARENTS OF SUCH CHILD; TO REPEAL SECTION 93-17-223, MISSISSIPPI  
 6 CODE OF 1972, WHICH PROHIBITS ONE PARENT FROM DIVULGING THE  
 7 IDENTITY OF THE OTHER PARENT TO AN ADOPTEE; AND FOR RELATED  
 8 PURPOSES.

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

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

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

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



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

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

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

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

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

45 (3) In the case of a child born out of wedlock, the father  
46 shall not have a right to object to an adoption unless he has  
47 demonstrated, within the period ending thirty (30) days after the  
48 birth of the child, a full commitment to the responsibilities of  
49 parenthood. Determination of the rights of the father of a child  
50 born out of wedlock may be made in proceedings pursuant to a  
51 Petition for Determination of Rights as provided in Section  
52 93-17-6.

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

55 (3) In the case of a child born out of wedlock, the father  
56 shall not be deemed to be a parent for the purpose of this  
57 chapter, and no reference shall be made to the illegitimacy of  
58 such child. If an adopted child wishes to know the identity of  
59 the biological father of such child, such information shall be  
60 provided to the child.

61 (4) If such consent be not filed, then process shall be had  
62 upon the parties as provided by law for process in person or by  
63 publication, if they be nonresidents of the state or are not found



64 therein, after diligent search and inquiry, or are unknown after  
65 diligent search and inquiry; provided that the court or chancellor  
66 in vacation may fix a date in termtime or in vacation to which  
67 process may be returnable and shall have power to proceed in  
68 termtime or vacation. In any event, if the child is more than  
69 fourteen (14) years of age, a consent to the adoption, sworn to or  
70 acknowledged by the child, shall also be required or personal  
71 service of process shall be had upon the child in the same manner  
72 and in the same effect as if it were an adult.

73 SECTION 2. Section 93-17-13, Mississippi Code of 1972, is  
74 amended as follows:

75 93-17-13. A final decree of adoption shall not be entered  
76 before the expiration of six (6) months from the entry of the  
77 interlocutory decree except (a) when a child is a stepchild of a  
78 petitioner or is related by blood to the petitioner within the  
79 third degree according to the rules of the civil law or in any  
80 case in which the chancellor in the exercise of his discretion  
81 shall determine from all the proceedings and evidence in said  
82 cause that the six-month waiting period is not necessary or  
83 required for the benefit of the court, the petitioners or the  
84 child to be adopted, and shall so adjudicate in the decree entered  
85 in said cause, in either of which cases the final decree may be  
86 entered immediately without any delay and without an interlocutory  
87 decree, or (b) when the child has resided in the home of any  
88 petitioner prior to the granting of the interlocutory decree, in  
89 which case the court may, in its discretion, shorten the waiting  
90 period by the length of time the child has thus resided.

91 The final decree shall adjudicate, in addition to such other  
92 provisions as may be found by the court to be proper for the  
93 protection of the interests of the child; and its effect, unless  
94 otherwise specifically provided, shall be that (a) the child shall  
95 inherit from and through the adopting parents and shall likewise  
96 inherit from the other children of the adopting parents to the



97 same extent and under the same conditions as provided for the  
98 inheritance between brothers and sisters of the full blood by the  
99 laws of descent and distribution of the State of Mississippi, and  
100 that the adopting parents and their other children shall inherit  
101 from the child, just as if such child had been born to the  
102 adopting parents in lawful wedlock; (b) the child and the adopting  
103 parents and adoptive kindred are vested with all of the rights,  
104 powers, duties and obligations, respectively, as if such child had  
105 been born to the adopting parents in lawful wedlock, including all  
106 rights existing by virtue of Section 11-7-13, Mississippi Code of  
107 1972; provided, however, that inheritance by or from the adopted  
108 child shall be governed by subsection (a) above; (c) that the name  
109 of the child shall be changed if desired; and (d) that the natural  
110 parents and natural kindred of the child shall not inherit by or  
111 through the child except as to a natural parent who is the spouse  
112 of the adopting parent, and all parental rights of the natural  
113 parent, or parents, shall be terminated, except as to a natural  
114 parent who is the spouse of the adopting parent. Nothing in this  
115 chapter shall restrict the right of any person to dispose of  
116 property under a last will and testament.

117 An adopted child shall have the right to be provided the  
118 identity of the biological parents of such child.

119 SECTION 3. Section 93-17-25, Mississippi Code of 1972, is  
120 amended as follows:

121 93-17-25. All proceedings under this chapter shall be  
122 confidential and shall be held in closed court without admittance  
123 of any person other than the interested parties, except upon order  
124 of the court. All pleadings, reports, files and records  
125 pertaining to adopting proceedings shall be confidential and shall  
126 not be public records and shall be withheld from inspection or  
127 examination by any person, except upon order of the court in which  
128 the proceeding was had on good cause shown.



129           Upon motion of any interested person, the files of adoption  
130 proceedings, heretofore had may be placed in the confidential  
131 files upon order of the court or chancellor and shall be subject  
132 to the provisions of this chapter.

133           Provided, however, that notwithstanding the confidential  
134 nature of said proceedings, said record shall be available for use  
135 in any court or administrative proceedings under a subpoena duces  
136 tecum addressed to the custodian of said records and portions of  
137 such record may be released pursuant to Sections 93-17-201 through  
138 93-17-223.

139           An adopted child shall have the right to be provided the  
140 identity of the biological parents of such child.

141           SECTION 4. Section 93-17-205, Mississippi Code of 1972, is  
142 amended as follows:

143           93-17-205. (1) The bureau shall maintain a centralized  
144 adoption records file for all adoptions performed in this state  
145 after the effective date of this chapter which shall include the  
146 following information:

147           (a) The medical and social history of the birth  
148 parents, including information regarding genetically inheritable  
149 diseases or illnesses and any similar information furnished by the  
150 birth parents about the adoptee's grandparents, aunts, uncles,  
151 brothers and sisters;

152           (b) A report of any medical examination which either  
153 birth parent had within one (1) year before the date of the  
154 petition for adoption, if available;

155           (c) A report describing the adoptee's prenatal care and  
156 medical condition at birth, if available; and

157           (d) The medical and social history of the adoptee,  
158 including information regarding genetically inheritable diseases  
159 or illnesses, and any other relevant medical, social and genetic  
160 information.



161 (2) Any birth parent may file with the bureau at any time  
162 any relevant supplemental nonidentifying information about the  
163 adoptee or the adoptee's birth parents, and the bureau shall  
164 maintain this information in the centralized adoption records  
165 file.

166 (3) The bureau shall also maintain as part of the  
167 centralized adoption records file the following:

168 (a) The name, date of birth, social security number  
169 (both original and revised, where applicable) and birth  
170 certificate (both original and revised) of the adoptee;

171 (b) The names, current addresses and social security  
172 numbers of the adoptee's birth parents, guardian and legal  
173 custodian;

174 (c) Any other available information about the birth  
175 parent's identity and location.

176 (4) Any birth parent shall file with the bureau at any time  
177 an affidavit authorizing the bureau to provide the adoptee with  
178 his or her original birth certificate and with any other available  
179 information about the birth parent's identity \* \* \*.

180 (5) Counsel for the adoptive parents in the adoption  
181 finalization proceeding shall provide the bureau with the  
182 information required in subsections (1) and (3) of this section,  
183 and he shall also make such information a part of the adoption  
184 records of the court in which the final decree of adoption is  
185 rendered. This information shall be provided on forms prepared by  
186 the bureau.

187 (6) (a) If an agency receives a report from a physician  
188 stating that a birth parent or another child of the birth parent  
189 has acquired or may have a genetically transferable disease or  
190 illness, the agency shall notify the bureau and the appropriate  
191 licensed adoption agency, and the latter agency shall notify the  
192 adoptee of the existence of the disease or illness, if he or she  
193 is twenty-one (21) years of age or over, or notify the adoptee's



194 guardian, custodian or adoptive parent if the adoptee is under age  
195 twenty-one (21).

196 (b) If an agency receives a report from a physician  
197 that an adoptee has acquired or may have a genetically  
198 transferable disease or illness, the agency shall notify the  
199 bureau and the appropriate licensed agency, and the latter agency  
200 shall notify the adoptee's birth parent of the existence of the  
201 disease or illness.

202 (7) Compliance with the provisions of this section may be  
203 waived by the court, in its discretion, in any chancery court  
204 proceeding in which one or more of the petitioners for adoption is  
205 the natural mother or father of the adoptee.

206 SECTION 5. Section 93-17-207, Mississippi Code of 1972, is  
207 amended as follows:

208 93-17-207. (1) The bureau or the agency shall release the  
209 nonidentifying or identifying information maintained as provided  
210 in Section 93-17-205 for a reasonable fee, including the actual  
211 cost of reproduction, to any of the following persons upon request  
212 made with sufficient proof of identity:

- 213 (a) An adoptee eighteen (18) years of age or older;
- 214 (b) An adoptive parent;
- 215 (c) The guardian or legal custodian of an adoptee; or
- 216 (d) The offspring or blood sibling of an adoptee if the  
217 requester is eighteen (18) years of age or older.

218 (2) Information released pursuant to subsection (1) of this  
219 section shall not include the name and address of the birth  
220 parent, the identity of any provider of health care to the adoptee  
221 or to the birth parent and any other information which might  
222 reasonably lead to the discovery of the identity of either birth  
223 parent, unless such information is sought by the child.

224 SECTION 6. Section 93-17-209, Mississippi Code of 1972, is  
225 amended as follows:



226           93-17-209. (1) Whenever any person specified under Section  
227 93-17-207 wishes to obtain medical, social or genetic background  
228 information about an adoptee or nonidentifying information about  
229 the birth parents of such adoptee or the adoptee wishes to obtain  
230 identifying, medical, social or background information, and the  
231 information is not on file with the bureau and the birth parents  
232 have not filed affidavits prohibiting a search to be conducted for  
233 them under the provisions of §§ 93-17-201 through 93-17-223, the  
234 person may request a licensed adoption agency to locate the birth  
235 parents to obtain the information.

236           (2) Employees of any agency conducting a search under this  
237 section may not inform any person other than the birth parents of  
238 the purpose of the search.

239           (3) The agency may charge the requester a reasonable fee for  
240 the cost of the search. When the agency determines that the fee  
241 will exceed One Hundred Dollars (\$100.00) for either birth parent,  
242 it shall notify the requester. No fee in excess of One Hundred  
243 Dollars (\$100.00) per birth parent may be charged unless the  
244 requester, after receiving notification under this paragraph, has  
245 given consent to proceed with the search.

246           (4) The agency conducting the search shall, upon locating a  
247 birth parent, notify him or her of the request and of the need for  
248 medical, social, genetic or identifying information.

249           (5) The agency shall release to the requester any medical or  
250 genetic information provided by a birth parent under this section  
251 without disclosing the birth parent's identity or location, unless  
252 the requester is the child and in that case identifying  
253 information shall be provided.

254           (6) If a birth parent is located but refuses to provide the  
255 information requested, the agency shall notify the requester,  
256 without disclosing the birth parent's identity or location, and  
257 the requester may petition the chancery court to order the birth  
258 parent to disclose the nonidentifying information or identifying





259 information if the requestor is the child. The court shall grant  
260 the motion for good cause shown and if the requester is the child  
261 good cause shall be presumed.

262 (7) The Mississippi Department of Human Services shall  
263 provide the bureau each year with a list of licensed adoption  
264 agencies in this state capable of performing the types of searches  
265 described in this section.

266 SECTION 7. Section 93-17-215, Mississippi Code of 1972, is  
267 amended as follows:

268 93-17-215. Any person \* \* \* who has been adopted in this  
269 state may request the bureau through a licensed adoption agency  
270 providing post-adoption services to obtain and provide the  
271 identifying information regarding either or both of his or her  
272 birth parents maintained as provided in Section 93-17-205 \* \* \*.

273 SECTION 8. Section 93-17-217, Mississippi Code of 1972, is  
274 amended as follows:

275 93-17-217. \* \* \* Before acting on a request made pursuant to  
276 Section 93-17-209 or Section 93-17-215, the agency shall require  
277 the adoptee to provide adequate identification and to submit to  
278 counseling by such agency in connection with the release and use  
279 of this information. The bureau shall release the requested  
280 information to the designated agency upon request by such agency.

281 SECTION 9. Section 93-17-219, Mississippi Code of 1972, is  
282 amended as follows:

283 93-17-219. (1) If the bureau does not have on file (a) an  
284 affidavit \* \* \* authorizing release of identifying  
285 information \* \* \* and any further contact from each known birth  
286 parent for whom information is sought, or (b) a notice that such  
287 birth parent has been contacted once and has refused to authorize  
288 the release of confidential information, then the adoptee may  
289 request the agency to undertake a search for the birth parent who  
290 has not filed an affidavit or who has not been contacted. The



291 licensed agency shall not inform any person other than the birth  
292 parents of the purpose of the search.

293 (2) The licensed agency may charge the adoptee a reasonable  
294 fee for the cost of the search. When the agency determines that  
295 the fee will exceed One Hundred Dollars (\$100.00) for either birth  
296 parent, it shall notify the adoptee. No fee in excess of One  
297 Hundred Dollars (\$100.00) per birth parent may be charged unless  
298 the adoptee, after receiving notification under this paragraph,  
299 has given consent to proceed with the search.

300 (3) Upon locating a birth parent the licensed agency  
301 conducting the search shall make at least one (1) verbal contact  
302 and notify him or her of the following:

- 303 (a) The nature of the information requested;  
304 (b) The date of the request; and  
305 (c) The fact that the birth parent shall consent  
306 to \* \* \* the release of this information \* \* \*.

307 (4) Within three (3) working days after contacting a birth  
308 parent, the licensed agency shall provide the birth parent with a  
309 written statement of the information requested and an affidavit  
310 form authorizing \* \* \* the release of the requested  
311 information. \* \* \* The licensed agency shall disclose the  
312 requested information about that birth parent to the child only.

313 (5) If a licensed agency has contacted a birth parent as  
314 provided by this section, and the birth parent does not file the  
315 affidavit, the agency shall not disclose the requested information  
316 to any person other than the child.

317 (6) If, after a search under this section, a known birth  
318 parent cannot be located, the agency shall not disclose the  
319 requested identifying information about that birth parent to any  
320 person except the child, although it may disclose any available  
321 nonidentifying information regarding that birth parent, and it may  
322 disclose identifying information about the other birth parent if  
323 such other birth parent has signed an unrevoked affidavit



324 authorizing such release. If a birth parent is located and  
325 refuses to authorize the release of identifying information, the  
326 agency locating this birth parent shall notify the bureau. The  
327 bureau shall note such contact and refusal in its records.

328 \* \* \*

329 SECTION 10. Section 93-17-223, Mississippi Code of 1972,  
330 which prohibits one parent from divulging the identity of the  
331 other parent to an adoptee, is repealed.

332 SECTION 11. This act shall take effect and be in force from  
333 and after July 1, 2001.

