

By: Senator(s) Turner

To: Judiciary

SENATE BILL NO. 2987

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.

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

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

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

49 93-17-6. (1) Any person who would be a necessary party to
50 an adoption proceeding under this chapter and any person alleged
51 or claiming to be the father of a child born out of wedlock who is
52 proposed for adoption or who has been determined to be such by any
53 administrative or judicial procedure (the "alleged father") may
54 file a petition for determination of rights as a preliminary
55 pleading to a petition for adoption in any court which would have
56 jurisdiction and venue of an adoption proceeding. A petition for
57 determination of rights may be filed at any time after the period
58 ending thirty (30) days after the birth of the child. Should
59 competing petitions be filed in two (2) or more courts having
60 jurisdiction and venue, the court in which the first such petition

61 was properly filed shall have jurisdiction over the whole
62 proceeding until its disposition. The prospective adopting
63 parents need not be a party to such petition. Where the child's
64 biological mother has surrendered the child to a home for
65 adoption, the home may represent the biological mother and her
66 interests in this proceeding.

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

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

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

78 (a) Provided financial support, including, but not
79 limited to, the payment of consistent support to the mother during
80 her pregnancy, contributions to the payment of the medical
81 expenses of pregnancy and birth, and contributions of consistent
82 support of the child after birth; that he frequently and
83 consistently visited the child after birth; and that he is now
84 willing and able to assume legal and physical care of the child;
85 or

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

91 (5) If the court determines that the alleged father has not
92 met his full responsibilities of parenthood, it shall enter an

93 order terminating his parental rights and he shall have no right
94 to object to an adoption under Section 93-17-7.

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

99 (7) A petition for determination of rights may be used to
100 determine the rights of alleged fathers whose identity is unknown
101 or uncertain. In such cases the court shall determine what, if
102 any, notice can be and is to be given such persons.
103 Determinations of rights under the procedure of this section may
104 also be made under a petition for adoption.

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

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

112 * * *

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

115 93-17-7. (1) No infant shall be adopted to any person if
116 either parent, after having been summoned, shall appear and object
117 thereto before the making of a decree for adoption, unless it
118 shall be made to appear to the court from evidence touching such
119 matters that the parent so objecting had abandoned or deserted
120 such infant or is mentally, or morally, or otherwise unfit to rear
121 and train it, including, but not limited to, those matters set out
122 in subsection (2) below, in either of which cases the adoption may
123 be decreed notwithstanding the objection of such parent, first
124 considering the welfare of the child, or children, sought to be
125 adopted. Provided, however, the parents shall not be summoned in

126 the adoption proceedings nor have the right to object thereto if
127 the parental rights of the parent or parents have been terminated
128 by the procedure set forth in Sections 93-15-101 through
129 93-15-111, and such termination shall be res judicata on the
130 question of parental abandonment or unfitness in the adoption
131 proceedings. Appointment of a guardian ad litem by the court
132 shall not be mandatory when the adoption is uncontested or where
133 all necessary parties have been properly summoned and no party has
134 filed an objection to the proceeding.

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

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

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

148 (c) The parent suffers from a medical or emotional
149 illness, mental deficiency, behavior or conduct disorder, severe
150 physical disability, substance abuse or chemical dependency which
151 makes him unable or unwilling to provide an adequate permanent
152 home for the child at the present time or in the reasonably near
153 future based upon expert opinion or based upon an established
154 pattern of behavior.

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

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

162 (f) The enumeration of conduct or omissions in this
163 subsection (2) in no way limits the court's power to such
164 enumerated conduct or omissions in determining a parent's
165 abandonment or desertion of the child or unfitness under
166 subparagraph (1) * * *.

167 SECTION 4. This act shall take effect and be in force from
168 and after June 30, 2001.