

By: Senator(s) Turner

To: Judiciary

COMMITTEE SUBSTITUTE  
FOR  
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 REMOVE 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 have  
31 been awarded by a court of competent jurisdiction of the State of  
32 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 its next friend.

40 \* \* \*

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 \* \* \*

50 (4) If such consent be not filed, then process shall be had  
51 upon the parties as provided by law for process in person or by  
52 publication, if they be nonresidents of the state or are not found  
53 therein, after diligent search and inquiry, or are unknown after  
54 diligent search and inquiry; provided that the court or chancellor  
55 in vacation may fix a date in termtime or in vacation to which  
56 process may be returnable and shall have power to proceed in  
57 termtime or vacation. In any event, if the child is more than  
58 fourteen (14) years of age, a consent to the adoption, sworn to or  
59 acknowledged by the child, shall also be required or personal

60 service of process shall be had upon the child in the same manner  
61 and in the same effect as if it were an adult.

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

64 93-17-6. (1) Any person who would be a necessary party to  
65 an adoption proceeding under this chapter and any person alleged  
66 or claiming to be the father of a child born out of wedlock who is  
67 proposed for adoption or who has been determined to be such by any  
68 administrative or judicial procedure (the "alleged father") may  
69 file a petition for determination of rights as a preliminary  
70 pleading to a petition for adoption in any court which would have  
71 jurisdiction and venue of an adoption proceeding. A petition for  
72 determination of rights may be filed at any time after the period  
73 ending thirty (30) days after the birth of the child. Should  
74 competing petitions be filed in two (2) or more courts having  
75 jurisdiction and venue, the court in which the first such petition  
76 was properly filed shall have jurisdiction over the whole  
77 proceeding until its disposition. The prospective adopting  
78 parents need not be a party to such petition. Where the child's  
79 biological mother has surrendered the child to a home for  
80 adoption, the home may represent the biological mother and her  
81 interests in this proceeding.

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

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

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

93           (a) Provided financial support, including, but not  
94 limited to, the payment of consistent support to the mother during  
95 her pregnancy, contributions to the payment of the medical  
96 expenses of pregnancy and birth, and contributions of consistent  
97 support of the child after birth; that he frequently and  
98 consistently visited the child after birth; and that he is now  
99 willing and able to assume legal and physical care of the child;  
100 or

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

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

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

114           (7) A petition for determination of rights may be used to  
115 determine the rights of alleged fathers whose identity is unknown  
116 or uncertain. In such cases the court shall determine what, if  
117 any, notice can be and is to be given such persons.  
118 Determinations of rights under the procedure of this section may  
119 also be made under a petition for adoption.

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

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

127       \* \* \*

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

130           93-17-7. \* \* \*

131           (1) No infant shall be adopted to any person if either  
132 parent, after having been summoned, shall appear and object  
133 thereto before the making of a decree for adoption, unless it  
134 shall be made to appear to the court from evidence touching such  
135 matters that the parent so objecting had abandoned or deserted  
136 such infant or is mentally, or morally, or otherwise unfit to rear  
137 and train it, including, but not limited to, those matters set out  
138 in subsection (2) of this section, in either of which cases the  
139 adoption may be decreed notwithstanding the objection of such  
140 parent, first considering the welfare of the child, or children,  
141 sought to be adopted. Provided, however, the parents shall not be  
142 summoned in the adoption proceedings nor have the right to object  
143 thereto if the parental rights of the parent or parents have been  
144 terminated by the procedure set forth in Sections 93-15-101  
145 through 93-15-111, and such termination shall be res judicata on  
146 the question of parental abandonment or unfitness in the adoption  
147 proceedings. Appointment of a guardian ad litem by the court  
148 shall not be mandatory when the adoption is uncontested or where  
149 all necessary parties have been properly summoned and no party has  
150 filed an objection to the proceeding.

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

153           (a) The parent has abused the child. For purposes of  
154 this paragraph, abuse means the infliction of physical or mental  
155 injury which causes deterioration to the child, sexual abuse,

156 exploitation or overworking of a child to such an extent that his  
157 health or moral or emotional well-being is endangered.

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

164 (c) The parent suffers from a medical or emotional  
165 illness, mental deficiency, behavior or conduct disorder, severe  
166 physical disability, substance abuse or chemical dependency which  
167 makes him unable or unwilling to provide an adequate permanent  
168 home for the child at the present time or in the reasonably near  
169 future based upon expert opinion or based upon an established  
170 pattern of behavior.

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

175 (e) The parent has engaged in acts or omissions  
176 permitting termination of parental rights under Section  
177 93-15-103 \* \* \*.

178 (f) The enumeration of conduct or omissions in this  
179 subsection (2) in no way limits the court's power to such  
180 enumerated conduct or omissions in determining a parent's  
181 abandonment or desertion of the child or unfitness under  
182 subsection (1) of this section.

183 \* \* \*

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