

By: Representative Clark

To: Judiciary A

HOUSE BILL NO. 245

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 (3) In the case of a child born out of wedlock, the father
44 shall not be deemed to be a parent for the purpose of this
45 chapter, and no reference shall be made to the illegitimacy of
46 such child. If an adopted child wishes to know the identity of
47 the biological father of such child, such information shall be
48 provided to the child.

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

61 **SECTION 2.** Section 93-17-13, Mississippi Code of 1972, is
62 amended as follows:



63 93-17-13. A final decree of adoption shall not be entered
64 before the expiration of six (6) months from the entry of the
65 interlocutory decree except (a) when a child is a stepchild of a
66 petitioner or is related by blood to the petitioner within the
67 third degree according to the rules of the civil law or in any
68 case in which the chancellor in the exercise of his discretion
69 shall determine from all the proceedings and evidence in said
70 cause that the six-month waiting period is not necessary or
71 required for the benefit of the court, the petitioners or the
72 child to be adopted, and shall so adjudicate in the decree entered
73 in said cause, in either of which cases the final decree may be
74 entered immediately without any delay and without an interlocutory
75 decree, or (b) when the child has resided in the home of any
76 petitioner prior to the granting of the interlocutory decree, in
77 which case the court may, in its discretion, shorten the waiting
78 period by the length of time the child has thus resided.

79 The final decree shall adjudicate, in addition to such other
80 provisions as may be found by the court to be proper for the
81 protection of the interests of the child; and its effect, unless
82 otherwise specifically provided, shall be that (a) the child shall
83 inherit from and through the adopting parents and shall likewise
84 inherit from the other children of the adopting parents to the
85 same extent and under the same conditions as provided for the
86 inheritance between brothers and sisters of the full blood by the
87 laws of descent and distribution of the State of Mississippi, and
88 that the adopting parents and their other children shall inherit
89 from the child, just as if such child had been born to the
90 adopting parents in lawful wedlock; (b) the child and the adopting
91 parents and adoptive kindred are vested with all of the rights,
92 powers, duties and obligations, respectively, as if such child had
93 been born to the adopting parents in lawful wedlock, including all
94 rights existing by virtue of Section 11-7-13, Mississippi Code of
95 1972; provided, however, that inheritance by or from the adopted



96 child shall be governed by subsection (a) above; (c) that the name
97 of the child shall be changed if desired; and (d) that the natural
98 parents and natural kindred of the child shall not inherit by or
99 through the child except as to a natural parent who is the spouse
100 of the adopting parent, and all parental rights of the natural
101 parent, or parents, shall be terminated, except as to a natural
102 parent who is the spouse of the adopting parent. Nothing in this
103 chapter shall restrict the right of any person to dispose of
104 property under a last will and testament.

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

107 **SECTION 3.** Section 93-17-25, Mississippi Code of 1972, is
108 amended as follows:

109 93-17-25. All proceedings under this chapter shall be
110 confidential and shall be held in closed court without admittance
111 of any person other than the interested parties, except upon order
112 of the court. All pleadings, reports, files and records
113 pertaining to adopting proceedings shall be confidential and shall
114 not be public records and shall be withheld from inspection or
115 examination by any person, except upon order of the court in which
116 the proceeding was had on good cause shown.

117 Upon motion of any interested person, the files of adoption
118 proceedings, heretofore had may be placed in the confidential
119 files upon order of the court or chancellor and shall be subject
120 to the provisions of this chapter.

121 Provided, however, that notwithstanding the confidential
122 nature of said proceedings, said record shall be available for use
123 in any court or administrative proceedings under a subpoena duces
124 tecum addressed to the custodian of said records and portions of
125 such record may be released pursuant to Sections 93-17-201 through
126 93-17-223.

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



129 **SECTION 4.** Section 93-17-205, Mississippi Code of 1972, is
130 amended as follows:

131 93-17-205. (1) The bureau shall maintain a centralized
132 adoption records file for all adoptions performed in this state
133 after the effective date of this chapter which shall include the
134 following information:

135 (a) The medical and social history of the birth
136 parents, including information regarding genetically inheritable
137 diseases or illnesses and any similar information furnished by the
138 birth parents about the adoptee's grandparents, aunts, uncles,
139 brothers and sisters;

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

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

145 (d) The medical and social history of the adoptee,
146 including information regarding genetically inheritable diseases
147 or illnesses, and any other relevant medical, social and genetic
148 information.

149 (2) Any birth parent may file with the bureau at any time
150 any relevant supplemental nonidentifying information about the
151 adoptee or the adoptee's birth parents, and the bureau shall
152 maintain this information in the centralized adoption records
153 file.

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

156 (a) The name, date of birth, social security number
157 (both original and revised, where applicable) and birth
158 certificate (both original and revised) of the adoptee;

159 (b) The names, current addresses and social security
160 numbers of the adoptee's birth parents, guardian and legal
161 custodian;



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

164 (4) Any birth parent shall file with the bureau at any time
165 an affidavit authorizing the bureau to provide the adoptee with
166 his or her original birth certificate and with any other available
167 information about the birth parent's identity * * *.

168 (5) Counsel for the adoptive parents in the adoption
169 finalization proceeding shall provide the bureau with the
170 information required in subsections (1) and (3) of this section,
171 and he shall also make such information a part of the adoption
172 records of the court in which the final decree of adoption is
173 rendered. This information shall be provided on forms prepared by
174 the bureau.

175 (6) (a) If an agency receives a report from a physician
176 stating that a birth parent or another child of the birth parent
177 has acquired or may have a genetically transferable disease or
178 illness, the agency shall notify the bureau and the appropriate
179 licensed adoption agency, and the latter agency shall notify the
180 adoptee of the existence of the disease or illness, if he or she
181 is twenty-one (21) years of age or over, or notify the adoptee's
182 guardian, custodian or adoptive parent if the adoptee is under age
183 twenty-one (21).

184 (b) If an agency receives a report from a physician
185 that an adoptee has acquired or may have a genetically
186 transferable disease or illness, the agency shall notify the
187 bureau and the appropriate licensed agency, and the latter agency
188 shall notify the adoptee's birth parent of the existence of the
189 disease or illness.

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



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

196 93-17-207. (1) The bureau or the agency shall release the
197 nonidentifying or identifying information maintained as provided
198 in Section 93-17-205 for a reasonable fee, including the actual
199 cost of reproduction, to any of the following persons upon request
200 made with sufficient proof of identity:

- 201 (a) An adoptee eighteen (18) years of age or older;
- 202 (b) An adoptive parent;
- 203 (c) The guardian or legal custodian of an adoptee; or
- 204 (d) The offspring or blood sibling of an adoptee if the
205 requester is eighteen (18) years of age or older.

206 (2) Information released pursuant to subsection (1) of this
207 section shall not include the name and address of the birth
208 parent, the identity of any provider of health care to the adoptee
209 or to the birth parent and any other information which might
210 reasonably lead to the discovery of the identity of either birth
211 parent, unless such information is sought by the child.

212 **SECTION 6.** Section 93-17-209, Mississippi Code of 1972, is
213 amended as follows:

214 93-17-209. (1) Whenever any person specified under Section
215 93-17-207 wishes to obtain medical, social or genetic background
216 information about an adoptee or nonidentifying information about
217 the birth parents of such adoptee or the adoptee wishes to obtain
218 identifying, medical, social or background information, and the
219 information is not on file with the bureau and the birth parents
220 have not filed affidavits prohibiting a search to be conducted for
221 them under the provisions of §§ 93-17-201 through 93-17-223, the
222 person may request a licensed adoption agency to locate the birth
223 parents to obtain the information.

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



227 (3) The agency may charge the requester a reasonable fee for
228 the cost of the search. When the agency determines that the fee
229 will exceed One Hundred Dollars (\$100.00) for either birth parent,
230 it shall notify the requester. No fee in excess of One Hundred
231 Dollars (\$100.00) per birth parent may be charged unless the
232 requester, after receiving notification under this paragraph, has
233 given consent to proceed with the search.

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

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

242 (6) If a birth parent is located but refuses to provide the
243 information requested, the agency shall notify the requester,
244 without disclosing the birth parent's identity or location, and
245 the requester may petition the chancery court to order the birth
246 parent to disclose the nonidentifying information or identifying
247 information if the requestor is the child. The court shall grant
248 the motion for good cause shown and if the requester is the child
249 good cause shall be presumed.

250 (7) The Mississippi Department of Human Services shall
251 provide the bureau each year with a list of licensed adoption
252 agencies in this state capable of performing the types of searches
253 described in this section.

254 **SECTION 7.** Section 93-17-215, Mississippi Code of 1972, is
255 amended as follows:

256 93-17-215. Any person * * * who has been adopted in this
257 state may request the bureau through a licensed adoption agency
258 providing post-adoption services to obtain and provide the



259 identifying information regarding either or both of his or her
260 birth parents maintained as provided in Section 93-17-205 * * *.

261 **SECTION 8.** Section 93-17-217, Mississippi Code of 1972, is
262 amended as follows:

263 93-17-217. * * * Before acting on a request made pursuant to
264 Section 93-17-209 or Section 93-17-215, the agency shall require
265 the adoptee to provide adequate identification and to submit to
266 counseling by such agency in connection with the release and use
267 of this information. The bureau shall release the requested
268 information to the designated agency upon request by such agency.

269 **SECTION 9.** Section 93-17-219, Mississippi Code of 1972, is
270 amended as follows:

271 93-17-219. (1) If the bureau does not have on file (a) an
272 affidavit * * * authorizing release of identifying
273 information * * * and any further contact from each known birth
274 parent for whom information is sought, or (b) a notice that such
275 birth parent has been contacted once and has refused to authorize
276 the release of confidential information, then the adoptee may
277 request the agency to undertake a search for the birth parent who
278 has not filed an affidavit or who has not been contacted. The
279 licensed agency shall not inform any person other than the birth
280 parents of the purpose of the search.

281 (2) The licensed agency may charge the adoptee a reasonable
282 fee for the cost of the search. When the agency determines that
283 the fee will exceed One Hundred Dollars (\$100.00) for either birth
284 parent, it shall notify the adoptee. No fee in excess of One
285 Hundred Dollars (\$100.00) per birth parent may be charged unless
286 the adoptee, after receiving notification under this paragraph,
287 has given consent to proceed with the search.

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

291 (a) The nature of the information requested;



292 (b) The date of the request; and
293 (c) The fact that the birth parent shall consent
294 to * * * the release of this information * * *.

295 (4) Within three (3) working days after contacting a birth
296 parent, the licensed agency shall provide the birth parent with a
297 written statement of the information requested and an affidavit
298 form authorizing * * * the release of the requested
299 information. * * * The licensed agency shall disclose the
300 requested information about that birth parent to the child only.

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

305 (6) If, after a search under this section, a known birth
306 parent cannot be located, the agency shall not disclose the
307 requested identifying information about that birth parent to any
308 person except the child, although it may disclose any available
309 nonidentifying information regarding that birth parent, and it may
310 disclose identifying information about the other birth parent if
311 such other birth parent has signed an unrevoked affidavit
312 authorizing such release. If a birth parent is located and
313 refuses to authorize the release of identifying information, the
314 agency locating this birth parent shall notify the bureau. The
315 bureau shall note such contact and refusal in its records.

316 * * *

317 **SECTION 10.** Section 93-17-223, Mississippi Code of 1972,
318 which prohibits one parent from divulging the identity of the
319 other parent to an adoptee, is repealed.

320 **SECTION 11.** This act shall take effect and be in force from
321 and after July 1, 2002.

