

By: Representative Mayo

To: Judiciary A

HOUSE BILL NO. 606
(As Passed the House)

1 AN ACT TO AMEND SECTION 93-17-5, MISSISSIPPI CODE OF 1972, TO
2 CLARIFY THE RIGHTS OF FATHERS OF CHILDREN BORN OUT OF WEDLOCK TO
3 OBJECT TO ADOPTIONS; TO CODIFY SECTION 93-17-6, MISSISSIPPI CODE
4 OF 1972, TO PROVIDE FOR THE FATHER'S PETITION FOR DETERMINATION OF
5 RIGHTS IN PROPOSED ADOPTIONS OF CHILDREN BORN OUT OF WEDLOCK; TO
6 AMEND SECTION 93-17-7, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT
7 AN ADOPTION MAY BE ALLOWED OVER THE OBJECTION OF A PARENT IN
8 CERTAIN CIRCUMSTANCES; AND FOR RELATED 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 have a right to object to an adoption unless he has
45 demonstrated, within the period ending ninety (90) days after the
46 birth of the child, a full commitment to the responsibilities of
47 parenthood. Determination of the rights of the father of a child
48 born out of wedlock may be made in proceedings pursuant to a
49 petition for determination of rights as provided in Section
50 93-17-6.

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



63 **SECTION 2.** The following shall be codified as Section
64 93-17-6, Mississippi Code of 1972:

65 93-17-6. (1) Any person who would be a necessary party to
66 an adoption proceeding under this chapter and any person alleged
67 or claiming to be the father of a child born out of wedlock who is
68 proposed for adoption or who has been determined to be such by any
69 administrative or judicial procedure (the "alleged father") may
70 file a petition for determination of rights as a preliminary
71 pleading to a petition for adoption in any court which would have
72 jurisdiction and venue of an adoption proceeding. A petition for
73 determination of rights may be filed at any time after the period
74 ending ninety (90) days after the birth of the child. Should
75 competing petitions be filed in two (2) or more courts having
76 jurisdiction and venue, the court in which the first such petition
77 was properly filed shall have jurisdiction over the whole
78 proceeding until its disposition. The prospective adopting
79 parents need not be a party to such petition. Where the child's
80 biological mother has surrendered the child to a home for
81 adoption, the home may represent the biological mother and her
82 interests in this proceeding.

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

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

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

94 (a) Provided financial support, including, but not
95 limited to, the payment of consistent support to the mother during



96 her pregnancy, contributions to the payment of the medical
97 expenses of pregnancy and birth, and contributions of consistent
98 support of the child after birth; that he frequently and
99 consistently visited the child after birth; and that he is now
100 willing and able to assume legal and physical care of the child;
101 or

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

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

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

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

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

125 **SECTION 3.** Section 93-17-7, Mississippi Code of 1972, is
126 amended as follows:

127 93-17-7. (1) No infant shall be adopted to any person if
128 either parent, after having been summoned, shall appear and object



129 thereto before the making of a decree for adoption, unless it
130 shall be made to appear to the court from evidence touching such
131 matters that the parent so objecting had abandoned or deserted
132 such infant or is mentally, or morally, or otherwise unfit to rear
133 and train it, including, but not limited to, those matters set out
134 in subsection (2) of this section, in either of which cases the
135 adoption may be decreed notwithstanding the objection of such
136 parent, first considering the welfare of the child, or children
137 sought to be adopted. Provided, however, the parents shall not be
138 summoned in the adoption proceedings nor have the right to object
139 thereto if the parental rights of the parent or parents have been
140 terminated by the procedure set forth in Sections 93-15-101
141 through 93-15-111, and such termination shall be res judicata on
142 the question of parental abandonment or unfitness in the adoption
143 proceedings.

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

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

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

157 (c) The parent suffers from a medical or emotional
158 illness, mental deficiency, behavior or conduct disorder, severe
159 physical disability, substance abuse or chemical dependency which
160 makes him unable or unwilling to provide an adequate permanent
161 home for the child at the present time or in the reasonably near



162 future based upon expert opinion or based upon an established
163 pattern of behavior.

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

168 (e) The parent has engaged in acts or omissions
169 permitting termination of parental rights under Section 93-15-103.

170 (f) The enumeration of conduct or omissions in this
171 subsection (2) in no way limits the court's power to such
172 enumerated conduct or omissions in determining a parent's
173 abandonment or desertion of the child or unfitness under
174 subsection (1) of this section.

175 **SECTION 4.** This act shall take effect and be in force from
176 and after July 1, 2002.

