

By: Representative Watson

To: Judiciary A

HOUSE BILL NO. 1269

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 thirty (30) 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 thirty (30) 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.

