

By: Senator(s) Williamson

To: Judiciary

SENATE BILL NO. 2750

1 AN ACT TO AMEND SECTIONS 93-17-5 AND 93-17-7, MISSISSIPPI
2 CODE OF 1972, TO CLARIFY THE DETERMINATION OF RIGHTS OF AN ALLEGED
3 FATHER IN ADOPTION PROCEEDINGS; TO RECODIFY WITH AMENDMENT SECTION
4 93-17-6, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR PETITIONS FOR
5 DETERMINATION OF RIGHTS; AND FOR 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 (1) of such kin is in possession of the child, he or
19 she shall join in the petition or be made a party to the suit; or,
20 (c) the guardian ad litem of an abandoned child, upon petition
21 showing that the names of the parents of such child are unknown
22 after diligent search and inquiry by the petitioners. In addition
23 to the above, there shall be made parties to any proceeding to
24 adopt a child, either by process or by the filing of a consent to
25 the 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 (3) In the case of a child born out of wedlock, the father
41 shall * * * be a party * * *. Determination of the rights of the
42 father of a child born out of wedlock may be made in proceedings
43 pursuant to a Petition for Determination of Rights as provided in
44 Section 93-17-6.

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

57 **SECTION 2.** Section 93-17-7, Mississippi Code of 1972, is
58 amended as follows:

59 93-17-7. No infant shall be adopted to any person if either
60 parent, after having been summoned, shall appear and object



thereto before the making of a decree for adoption, unless it shall be made to appear to the court from evidence touching such matters that the parent so objecting had abandoned, abused or deserted such infant or is mentally, or morally, or otherwise unfit to rear and train the child * * *. Provided, however, the parents shall not be summoned in the adoption proceedings nor have the right to object thereto if the parental rights of the parent or parents have been terminated by the procedure set forth in Sections 93-15-101 through 93-15-111, and such termination shall be res judicata on the question of parental abandonment or unfitness in the adoption proceedings. Appointment of a guardian ad litem by the court shall not be mandatory when the adoption is uncontested or where all necessary parties have been properly summoned and no party has filed an objection to the proceeding.

SECTION 3. The following shall be codified as Section 93-17-6, Mississippi Code of 1972:

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



93 adoption, the home may represent the biological mother and her
94 interests in this proceeding.

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

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

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

106 (a) Provided financial support, including, but not
107 limited to, the payment of consistent support to the mother during
108 her pregnancy, contributions to the payment of the medical
109 expenses of pregnancy and birth, and contributions of consistent
110 support of the child after birth; that he frequently and
111 consistently visited the child after birth; and that he is now
112 willing and able to assume legal and physical care of the child;
113 or

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

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

123 (6) If the court determines that the alleged father has met
124 his full responsibilities of parenthood and that he objects to the



125 child's adoption, the court shall set the matter as a contested
126 adoption in accord with Section 93-17-8.

127 (7) A petition for determination of rights may be used to
128 determine the rights of alleged fathers whose identity is unknown
129 or uncertain. In such cases the court shall determine what, if
130 any, notice can be and is to be given such persons.

131 Determinations of rights under the procedure of this section may
132 also be made under a petition for adoption.

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

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

140 **SECTION 4.** This act shall take effect and be in force from
141 and after its passage.

