

By: Representative Clark

To: Judiciary A

HOUSE BILL NO. 485

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 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. If an adopted child wishes to know the identity of the
51 biological father of such child, such information shall be
52 provided to the child.

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

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

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

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

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

96 powers, duties and obligations, respectively, as if such child had
97 been born to the adopting parents in lawful wedlock, including all
98 rights existing by virtue of Section 11-7-13, Mississippi Code of
99 1972; provided, however, that inheritance by or from the adopted
100 child shall be governed by subsection (a) above; (c) that the name
101 of the child shall be changed if desired; and (d) that the natural
102 parents and natural kindred of the child shall not inherit by or
103 through the child except as to a natural parent who is the spouse
104 of the adopting parent, and all parental rights of the natural
105 parent, or parents, shall be terminated, except as to a natural
106 parent who is the spouse of the adopting parent. Nothing in this
107 chapter shall restrict the right of any person to dispose of
108 property under a last will and testament.

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

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

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

121 Upon motion of any interested person, the files of adoption
122 proceedings, heretofore had may be placed in the confidential
123 files upon order of the court or chancellor and shall be subject
124 to the provisions of this chapter.

125 Provided, however, that notwithstanding the confidential
126 nature of said proceedings, said record shall be available for use
127 in any court or administrative proceedings under a subpoena duces
128 tecum addressed to the custodian of said records and portions of

129 such record may be released pursuant to Sections 93-17-201 through
130 93-17-223.

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

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

135 93-17-205. (1) The bureau shall maintain a centralized
136 adoption records file for all adoptions performed in this state
137 after the effective date of this chapter which shall include the
138 following information:

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

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

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

149 (d) The medical and social history of the adoptee,
150 including information regarding genetically inheritable diseases
151 or illnesses, and any other relevant medical, social and genetic
152 information.

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

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

160 (a) The name, date of birth, social security number
161 (both original and revised, where applicable) and birth
162 certificate (both original and revised) of the adoptee;

163 (b) The names, current addresses and social security
164 numbers of the adoptee's birth parents, guardian and legal
165 custodian;

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

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

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

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

188 (b) If an agency receives a report from a physician
189 that an adoptee has acquired or may have a genetically
190 transferable disease or illness, the agency shall notify the
191 bureau and the appropriate licensed agency, and the latter agency

192 shall notify the adoptee's birth parent of the existence of the
193 disease or illness.

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

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

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

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

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

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

218 93-17-209. (1) Whenever any person specified under Section
219 93-17-207 wishes to obtain medical, social or genetic background
220 information about an adoptee or nonidentifying information about
221 the birth parents of such adoptee or the adoptee wishes to obtain
222 identifying, medical, social or background information, and the
223 information is not on file with the bureau and the birth parents
224 have not filed affidavits prohibiting a search to be conducted for

225 them under the provisions of §§ 93-17-201 through 93-17-223, the
226 person may request a licensed adoption agency to locate the birth
227 parents to obtain the information.

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

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

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

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

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

254 (7) The Mississippi Department of Human Services shall
255 provide the bureau each year with a list of licensed adoption
256 agencies in this state capable of performing the types of searches
257 described in this section.

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

260 93-17-215. Any person * * * who has been adopted in this
261 state may request the bureau through a licensed adoption agency
262 providing post-adoption services to obtain and provide the
263 identifying information regarding either or both of his or her
264 birth parents maintained as provided in Section 93-17-205 * * *.

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

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

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

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

285 (2) The licensed agency may charge the adoptee a reasonable
286 fee for the cost of the search. When the agency determines that
287 the fee will exceed One Hundred Dollars (\$100.00) for either birth
288 parent, it shall notify the adoptee. No fee in excess of One
289 Hundred Dollars (\$100.00) per birth parent may be charged unless

290 the adoptee, after receiving notification under this paragraph,
291 has given consent to proceed with the search.

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

295 (a) The nature of the information requested;

296 (b) The date of the request; and

297 (c) The fact that the birth parent shall consent
298 to * * * the release of this information * * *.

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

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

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

320 * * *

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

324 **SECTION 11.** This act shall take effect and be in force from
325 and after July 1, 2004.