

By: Representative Holland

To: Judiciary A

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 588

1 AN ACT TO AMEND SECTION 93-17-3, MISSISSIPPI CODE OF 1972, TO
2 REQUIRE PETITIONERS IN AN ADOPTION PROCEEDING TO FILE AN AFFIDAVIT
3 WITH THE PETITION STATING THE AMOUNT OF THE SERVICE FEES CHARGED
4 BY ANY ADOPTION AGENCIES OR FACILITATORS USED BY THE PETITIONER
5 AND ANY OTHER EXPENSES PAID BY THE PETITIONER IN THE ADOPTION
6 PROCESS; TO AMEND SECTION 93-17-11, MISSISSIPPI CODE OF 1972, TO
7 PROVIDE THAT IN ANY ADOPTION PROCEEDING WHERE THE PETITIONER IS
8 NOT A RELATIVE OF THE CHILD, THE COURT MAY REQUIRE A HOME STUDY TO
9 BE MADE OF THE PETITIONER, WHICH SHALL BE COMPLETED AND SIGNED BY
10 A LICENSED MASTER SOCIAL WORKER; TO AMEND SECTION 43-15-117,
11 MISSISSIPPI CODE OF 1972, TO REQUIRE CHILD-PLACING AGENCIES,
12 ADOPTION AGENCIES AND ADOPTION FACILITATORS THAT ARE LOCATED OR
13 BASED OUTSIDE OF MISSISSIPPI TO BE LICENSED BY THE DEPARTMENT OF
14 HUMAN SERVICES BEFORE THEY ADVERTISE IN THE MEDIA MARKETS IN
15 MISSISSIPPI SEEKING BIRTH MOTHERS OR THEIR CHILDREN FOR ADOPTION
16 PURPOSES; AND FOR RELATED PURPOSES.

17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

18 **SECTION 1.** Section 93-17-3, Mississippi Code of 1972, is
19 amended as follows:

20 93-17-3. (1) Any person may be adopted in accordance with
21 the provisions of this chapter in term time or in vacation by an
22 unmarried adult or by a married person whose spouse joins in the
23 petition, provided that the petitioner or petitioners * * * have
24 resided in this state for ninety (90) days preceding the filing of
25 the petition. However, if * * * the petitioner or petitioners, or
26 one (1) of them, are related to the child within the third degree
27 according to civil law, or if * * * the adoption is presented to
28 the court by an adoption agency licensed by the State of
29 Mississippi, the residence restriction shall not apply. The
30 adoption shall be by sworn petition filed in the chancery court of
31 the county in which the adopting petitioner or petitioners reside
32 or in which the child to be adopted resides or was born, or was
33 found when it was abandoned or deserted, or in which the home is
34 located to which the child has been surrendered by a person

35 authorized to so do. The petition shall be accompanied by (a) a
36 doctor's or nurse practitioner's certificate showing the physical
37 and mental condition of the child to be adopted, (b) a sworn
38 statement of all property, if any, owned by the child, and (c)
39 affidavits of the petitioner or petitioners stating the amount of
40 the service fees charged by any adoption agencies or adoption
41 facilitators used by the petitioner or petitioners and any other
42 expenses paid by the petitioner or petitioners in the adoption
43 process. If the doctor's or nurse practitioner's certificate
44 indicates any abnormal mental or physical condition or defect, the
45 condition or defect shall not in the discretion of the chancellor
46 bar the adoption of the child if the adopting parent or
47 parents * * * file an affidavit stating full and complete
48 knowledge of the condition or defect and stating a desire to adopt
49 the child, notwithstanding the condition or defect. The court
50 shall have the power to change the name of the child as a part of
51 the adoption proceedings. The word "child" herein shall be
52 construed to refer to the person to be adopted, though an adult.

53 (2) Adoption by couples of the same gender is prohibited.

54 **SECTION 2.** Section 93-17-11, Mississippi Code of 1972, is
55 amended as follows:

56 93-17-11. At any time after the filing of the petition for
57 adoption and completion of process thereon, and before the
58 entering of a final decree, the court may, in its discretion, of
59 its own motion, or on motion of any party to the proceeding,
60 require an investigation and report to the court to be made by any
61 person, officer, or home as the court may designate and direct
62 concerning the child, giving the material facts upon which the
63 court may determine whether the child is a proper subject for
64 adoption, whether the petitioners or petitioner are suitable
65 parents for the child, whether the adoption is to its best
66 interest, and any other facts or circumstances that may be
67 material to the proposed adoption. In any adoption proceeding

68 where the petitioner or petitioners are not a relative of the
69 child, the court may require a home study to be made of the
70 petitioner or petitioners, which shall be completed and signed by
71 a licensed social worker. Such home study may be performed by the
72 Department of Human Services. The court, when an investigation
73 and report are required by the court or by this section, shall
74 stay the proceedings in the cause for such reasonable time as may
75 be necessary or required in the opinion of the court for the
76 completion of the investigation and report by the person, officer,
77 or home designated and authorized to make the same.

78 Upon the filing of that consent or the completion of the
79 process and the filing of the investigation and report, if
80 required by the court or by this section, and the presentation of
81 such other evidence as may be desired by the court, if the court
82 determines that it is to the best interests of the child that an
83 interlocutory decree of adoption be entered, the court may
84 thereupon enter an interlocutory decree upon such terms and
85 conditions as may be determined by the court, in its discretion,
86 but including therein that the complete care, custody and control
87 of the child shall be vested in the petitioner or petitioners
88 until further orders of the court and that during such time the
89 child shall be and remain a ward of the court. If the court
90 determines by decree at any time during the pendency of the
91 proceeding that it is not to the best interests of the child that
92 the adoption proceed, the petitioners shall be entitled to at
93 least five (5) days' notice upon their attorneys of record and a
94 hearing with the right of appeal as provided by law from a
95 dismissal of the petition; however, the bond perfecting the appeal
96 shall be filed within ten (10) days from the entry of the decree
97 of dismissal and the bond shall be in such amount as the
98 chancellor may determine and supersedeas may be granted by the
99 chancellor or as otherwise provided by law for appeal from final
100 decrees.

101 After the entry of the interlocutory decree and before entry
102 of the final decree, the court may require such further and
103 additional investigation and reports as it may deem proper. The
104 rights of the parties filing the consent or served with process
105 shall be subject to the decree but shall not be divested until
106 entry of the final decree.

107 **SECTION 3.** Section 43-15-117, Mississippi Code of 1972, is
108 amended as follows:

109 43-15-117. (1) Except as provided in this article, no
110 person, agency, firm, corporation, association or group children's
111 home may engage in child placing, or solicit money or other
112 assistance for child placing, without a valid license issued by
113 the division. No child-placing agency, adoption agency or
114 adoption facilitator that is located or based outside of the State
115 of Mississippi shall advertise in the media markets in Mississippi
116 seeking birth mothers or their children for adoption purposes,
117 unless the agency or facilitator holds a valid and current license
118 issued by the division under this article.

119 (2) (a) An attorney, physician or other person may assist a
120 parent in identifying or locating a person interested in adopting
121 the parent's child, or in identifying or locating a child to be
122 adopted. However, no payment, charge, fee, reimbursement of
123 expense, or exchange of value of any kind, or promise or agreement
124 to make the same, may be made for that assistance.

125 (b) An attorney, physician or other person may not:

126 (i) Issue or cause to be issued to any person a
127 card, sign or device indicating that he or she is available to
128 provide that assistance;

129 (ii) Cause, permit or allow any sign or marking
130 indicating that he or she is available to provide that assistance,
131 on or in any building or structure;

132 (iii) Announce or cause, permit or allow an
133 announcement indicating that he or she is available to provide

134 that assistance, to appear in any newspaper, magazine, directory
135 or on radio or television; or

136 (iv) Advertise by any other means that he or she
137 is available to provide that assistance.

138 (3) Nothing in this section precludes payment of usual and
139 customary fees for medical, legal or other lawful services
140 rendered in connection with the care of a mother, delivery and
141 care of a child, or counseling for the parents and/or the child,
142 and for the legal proceedings related to lawful adoption
143 proceedings; and no provision of this section abrogates the right
144 of procedures for independent adoption as provided by law.

145 (4) The division is specifically authorized to promulgate
146 rules under the Administrative Procedures Law, Title 25, Chapter
147 43, Mississippi Code of 1972, to regulate fees charged by licensed
148 child-placing agencies, if it determines that the practices of
149 those licensed child-placing agencies demonstrates that the fees
150 charged are excessive or that any of the agency's practices are
151 deceptive or misleading; however, those rules regarding fees shall
152 take into account the use of any sliding fee by an agency that
153 uses a sliding fee procedure to permit prospective adoptive
154 parents of varying income levels to utilize the services of those
155 agencies or persons.

156 (5) The division shall promulgate rules under the
157 Administrative Procedures Law, Title 25, Chapter 43, Mississippi
158 Code of 1972, to require that all licensed child-placing agencies
159 provide written disclosures to all prospective adoptive parents of
160 any fees or other charges for each service performed by the agency
161 or person, and file an annual report with the division that states
162 the fees and charges for those services, and to require them to
163 inform the division in writing thirty (30) days in advance of any
164 proposed changes to the fees or charges for those services.

165 (6) The division is specifically authorized to disclose to
166 prospective adoptive parents or other interested persons any fees

167 charged by any licensed child-placing agency, attorney or
168 counseling service or counselor for all legal and counseling
169 services provided by that licensed child-placing agency, attorney
170 or counseling service or counselor.

171 **SECTION 4.** This act shall take effect and be in force from
172 and after July 1, 2004.