

By: Representative Holland

To: Judiciary A

## HOUSE BILL NO. 1426

1 AN ACT TO AMEND SECTIONS 93-17-5 AND 93-17-6, MISSISSIPPI  
2 CODE OF 1972, TO CONFORM THE MINIMUM WAITING TIME FOR FILING A  
3 PETITION FOR DETERMINATION OF A FATHER'S RIGHTS IN AN ADOPTION  
4 PROCEEDING TO THE SAME TIME PERIOD AFTER A CHILD'S BIRTH THAT  
5 PARENTS CAN CONSENT TO ADOPTION OF THE CHILD, WHICH IS SEVENTY-TWO  
6 HOURS; AND FOR RELATED PURPOSES.

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

8 **SECTION 1.** Section 93-17-5, Mississippi Code of 1972, is  
9 amended as follows:

10 93-17-5. (1) There shall be made parties to the proceeding  
11 by process or by the filing therein of a consent to the adoption  
12 proposed in the petition, which consent shall be duly sworn to or  
13 acknowledged and executed only by the following persons, but not  
14 before seventy-two (72) hours after the birth of said child: (a)  
15 the parents, or parent, if only one (1) parent, though either be  
16 under the age of twenty-one (21) years; or, (b) in the event both  
17 parents are dead, then any two (2) adult kin of the child within  
18 the third degree computed according to the civil law, provided  
19 that, if one of such kin is in possession of the child, he or she  
20 shall join in the petition or be made a party to the suit; or, (c)  
21 the guardian ad litem of an abandoned child, upon petition showing  
22 that the names of the parents of such child are unknown after  
23 diligent search and inquiry by the petitioners. In addition to  
24 the above, there shall be made parties to any proceeding to adopt  
25 a child, either by process or by the filing of a consent to the  
26 adoption proposed in the petition, the following:

27 (i) Those persons having physical custody of such  
28 child, except persons having such child as foster parents as a

29 result of placement with them by the Department of Human Services  
30 of the State of Mississippi.

31 (ii) Any person to whom custody of such child may have  
32 been awarded by a court of competent jurisdiction of the State of  
33 Mississippi.

34 (iii) The agent of the county Department of Human  
35 Services of the State of Mississippi that has placed a child in  
36 foster care, either by agreement or by court order.

37 (2) Such consent may also be executed and filed by the duly  
38 authorized officer or representative of a home to whose care the  
39 child has been delivered. The child shall join the petition by  
40 its next friend.

41 (3) In the case of a child born out of wedlock, the father  
42 shall not have a right to object to an adoption unless he has  
43 demonstrated, within the period ending seventy-two (72) hours days  
44 after the birth of the child, a full commitment to the  
45 responsibilities of parenthood. Determination of the rights of  
46 the father of a child born out of wedlock may be made in  
47 proceedings pursuant to a petition for determination of rights as  
48 provided in Section 93-17-6.

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

61           **SECTION 2.** Section 93-17-6, Mississippi Code of 1972, is  
62 amended as follows:

63           93-17-6. (1) Any person who would be a necessary party to  
64 an adoption proceeding under this chapter and any person alleged  
65 or claiming to be the father of a child born out of wedlock who is  
66 proposed for adoption or who has been determined to be such by any  
67 administrative or judicial procedure (the "alleged father") may  
68 file a petition for determination of rights as a preliminary  
69 pleading to a petition for adoption in any court which would have  
70 jurisdiction and venue of an adoption proceeding. A petition for  
71 determination of rights may be filed at any time after the period  
72 ending seventy-two (72) hours days after the birth of the child.  
73 Should competing petitions be filed in two (2) or more courts  
74 having jurisdiction and venue, the court in which the first such  
75 petition was properly filed shall have jurisdiction over the whole  
76 proceeding until its disposition. The prospective adopting  
77 parents need not be a party to such petition. Where the child's  
78 biological mother has surrendered the child to a home for  
79 adoption, the home may represent the biological mother and her  
80 interests in this proceeding.

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

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

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

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

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

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

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

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

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

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

123 **SECTION 3.** This act shall take effect and be in force from  
124 and after July 1, 2004.