

By: Representative Moore

To: Judiciary A

HOUSE BILL NO. 1036

1 AN ACT TO AMEND SECTIONS 43-15-107 AND 43-15-117, MISSISSIPPI
2 CODE OF 1972, TO REQUIRE OUT-OF-STATE CHILD-PLACING AGENCIES THAT
3 PROVIDE A FULL RANGE OF SERVICES IN MISSISSIPPI TO BE LICENSED IN
4 THIS STATE AND TO MAINTAIN AN OFFICE WITH A RESIDENT EXECUTIVE AND
5 STAFF IN THIS STATE; TO AMEND SECTION 93-17-3, MISSISSIPPI CODE OF
6 1972, TO REQUIRE THAT ADOPTION PETITIONS SHALL BE ACCOMPANIED BY
7 AFFIDAVITS OF THE PETITIONERS STATING THE AMOUNT OF THE SERVICE
8 FEES CHARGED BY ANY ADOPTION AGENCIES OR ADOPTION FACILITATORS
9 USED BY THE PETITIONERS AND ANY OTHER EXPENSES PAID BY THE
10 PETITIONERS IN THE ADOPTION PROCESS AS OF THE TIME OF FILING THE
11 PETITION; TO AMEND SECTION 93-17-11, MISSISSIPPI CODE OF 1972, TO
12 REQUIRE THAT IN ALL ADOPTIONS OTHER THAN FAMILY ADOPTIONS, THE
13 COURT SHALL REQUIRE THAT A HOME STUDY BE PERFORMED BEFORE A FINAL
14 DECREE IS ENTERED IN THE PROCEEDING, AT THE PETITIONERS' SOLE
15 EXPENSE, TO DETERMINE WHETHER THE PETITIONERS ARE SUITABLE PARENTS
16 FOR THE CHILD; AND FOR RELATED PURPOSES.

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

18 **SECTION 1.** Section 43-15-107, Mississippi Code of 1972, is
19 amended as follows:

20 43-15-107. (1) Except as provided in Section 43-15-111, no
21 person, agency, firm, corporation, association or other entity,
22 acting individually or jointly with any other person or entity,
23 may establish, conduct or maintain foster homes, residential
24 child-caring agencies and child-placing agencies or facility
25 and/or engage in child placing in this state without a valid and
26 current license issued by and under the authority of the division
27 as provided by this article and the rules of the division. Any
28 out-of-state child-placing agency that provides a full range of
29 services, including, but not limited to, adoptions, foster family
30 homes, adoption counseling services or financial aid, in this
31 state must be licensed by division under this article, and must
32 maintain an office with a resident executive and staff in this
33 state.

34 (2) No license issued under this article is assignable or
35 transferable.

36 (3) A current license shall at all times be posted in each
37 licensee's facility, in a place that is visible and readily
38 accessible to the public.

39 (4) (a) Each license issued under this article expires at
40 midnight (Central Standard Time) twelve (12) months from the date
41 of issuance unless it has been:

42 (i) Previously revoked by the office; or

43 (ii) Voluntarily returned to the office by the
44 licensee.

45 (b) A license may be renewed upon application and
46 payment of the applicable fee, provided that the licensee meets
47 the license requirements established by this article and the rules
48 and regulations of the division.

49 (5) Any licensee or facility which is in operation at the
50 time rules are made in accordance with this article shall be given
51 a reasonable time for compliance as determined by the rules of the
52 division.

53 **SECTION 2.** Section 43-15-117, Mississippi Code of 1972, is
54 amended as follows:

55 43-15-117. (1) Except as provided in this article, no
56 person, agency, firm, corporation, association or group children's
57 home may engage in child placing, or solicit money or other
58 assistance for child placing, without a valid license issued by
59 the division. No out-of-state child-placing agency that provides
60 a full range of services, including, but not limited to,
61 adoptions, foster family homes, adoption counseling services or
62 financial aid, may operate in this state without a valid license
63 issued by the division. No child-placing agency shall advertise
64 in the media markets in Mississippi seeking birth mothers or their
65 children for adoption purposes unless the agency holds a valid and
66 current license issued either by the division or the authorized

67 governmental licensing agency of another state that regulates
68 child-placing agencies.

69 (2) An attorney, physician or other person may assist a
70 parent in identifying or locating a person interested in adopting
71 the parent's child, or in identifying or locating a child to be
72 adopted. However, no payment, charge, fee, reimbursement of
73 expense, or exchange of value of any kind, or promise or agreement
74 to make the same, may be made for that assistance.

75 (3) Nothing in this section precludes payment of reasonable
76 fees for medical, legal or other lawful services rendered in
77 connection with the care of a mother, delivery and care of a child
78 including, but not limited to, the mother's living expenses, or
79 counseling for the parents and/or the child, and for the legal
80 proceedings related to lawful adoption proceedings; and no
81 provision of this section abrogates the right of procedures for
82 independent adoption as provided by law.

83 (4) The division is specifically authorized to promulgate
84 rules under the Administrative Procedures Law, Title 25, Chapter
85 43, Mississippi Code of 1972, to regulate fees charged by licensed
86 child-placing agencies, if it determines that the practices of
87 those licensed child-placing agencies demonstrates that the fees
88 charged are excessive or that any of the agency's practices are
89 deceptive or misleading; however, those rules regarding fees shall
90 take into account the use of any sliding fee by an agency that
91 uses a sliding fee procedure to permit prospective adoptive
92 parents of varying income levels to utilize the services of those
93 agencies or persons.

94 (5) The division shall promulgate rules under the
95 Administrative Procedures Law, Title 25, Chapter 43, Mississippi
96 Code of 1972, to require that all licensed child-placing agencies
97 provide written disclosures to all prospective adoptive parents of
98 any fees or other charges for each service performed by the agency
99 or person, and file an annual report with the division that states

100 the fees and charges for those services, and to require them to
101 inform the division in writing thirty (30) days in advance of any
102 proposed changes to the fees or charges for those services.

103 (6) The division is specifically authorized to disclose to
104 prospective adoptive parents or other interested persons any fees
105 charged by any licensed child-placing agency, attorney or
106 counseling service or counselor for all legal and counseling
107 services provided by that licensed child-placing agency, attorney
108 or counseling service or counselor.

109 **SECTION 3.** Section 93-17-3, Mississippi Code of 1972, is
110 amended as follows:

111 93-17-3. (1) Any person may be adopted in accordance with
112 the provisions of this chapter in term time or in vacation by an
113 unmarried adult or by a married person whose spouse joins in the
114 petition, provided that the petitioner or petitioners have resided
115 in this state for ninety (90) days preceding the filing of the
116 petition. However, if the petitioner or petitioners, or one (1)
117 of them, are related to the child within the third degree
118 according to civil law, or if the adoption is presented to the
119 court by an adoption agency licensed by the State of Mississippi,
120 the residence restriction shall not apply. The adoption shall be
121 by sworn petition filed in the chancery court of the county in
122 which the adopting petitioner or petitioners reside or in which
123 the child to be adopted resides or was born, or was found when it
124 was abandoned or deserted, or in which the home is located to
125 which the child has been surrendered by a person authorized to so
126 do. The petition shall be accompanied by a doctor's or nurse
127 practitioner's certificate showing the physical and mental
128 condition of the child to be adopted and a sworn statement of all
129 property, if any, owned by the child. In addition, the petition
130 shall be accompanied by affidavits of the petitioner or
131 petitioners stating the amount of the service fees charged by any
132 adoption agencies or adoption facilitators used by the petitioner

133 or petitioners and any other expenses paid by the petitioner or
134 petitioners in the adoption process as of the time of filing the
135 petition. If the doctor's or nurse practitioner's certificate
136 indicates any abnormal mental or physical condition or defect, the
137 condition or defect shall not in the discretion of the chancellor
138 bar the adoption of the child if the adopting parent or parents
139 file an affidavit stating full and complete knowledge of the
140 condition or defect and stating a desire to adopt the child,
141 notwithstanding the condition or defect. The court shall have the
142 power to change the name of the child as a part of the adoption
143 proceedings. The word "child" in this section shall be construed
144 to refer to the person to be adopted, though an adult.

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

146 **SECTION 4.** Section 93-17-11, Mississippi Code of 1972, is
147 amended as follows:

148 93-17-11. At any time after the filing of the petition for
149 adoption and completion of process thereon, and before the
150 entering of a final decree, the court may, in its discretion, of
151 its own motion or on motion of any party to the proceeding,
152 require an investigation * * * and report to the court to be made
153 by any person, officer or home as the court may designate and
154 direct concerning the child, and shall require in all adoptions,
155 other than those in which the petitioner or petitioners are a
156 relative or stepparent of the child, that a home study be
157 performed of the petitioner or petitioners by an adoption agency
158 licensed in this state, at the petitioner's or petitioners' sole
159 expense and at no cost to the state or county. The investigation
160 and report shall give the material facts upon which the court may
161 determine whether the child is a proper subject for adoption,
162 whether the petitioner or petitioners are suitable parents for the
163 child, whether the adoption is to its best interest, and any other
164 facts or circumstances that may be material to the proposed
165 adoption. The home study shall determine whether the petitioner

166 or petitioners are suitable parents for the child. The court,
167 when an investigation and report are required by the court or by
168 this section, shall stay the proceedings in the cause for such
169 reasonable time as may be necessary or required in the opinion of
170 the court for the completion of the investigation and report by
171 the person, officer or home designated and authorized to make the
172 same.

173 Upon the filing of that consent or the completion of the
174 process and the filing of the investigation and report, if
175 required by the court or by this section, and the presentation of
176 such other evidence as may be desired by the court, if the court
177 determines that it is to the best interests of the child that an
178 interlocutory decree of adoption be entered, the court may
179 thereupon enter an interlocutory decree upon such terms and
180 conditions as may be determined by the court, in its discretion,
181 but including therein that the complete care, custody and control
182 of the child shall be vested in the petitioner or petitioners
183 until further orders of the court and that during such time the
184 child shall be and remain a ward of the court. If the court
185 determines by decree at any time during the pendency of the
186 proceeding that it is not to the best interests of the child that
187 the adoption proceed, the petitioners shall be entitled to at
188 least five (5) days' notice upon their attorneys of record and a
189 hearing with the right of appeal as provided by law from a
190 dismissal of the petition; however, the bond perfecting the appeal
191 shall be filed within ten (10) days from the entry of the decree
192 of dismissal and the bond shall be in such amount as the
193 chancellor may determine and supersedeas may be granted by the
194 chancellor or as otherwise provided by law for appeal from final
195 decrees.

196 After the entry of the interlocutory decree and before entry
197 of the final decree, the court may require such further and
198 additional investigation and reports as it may deem proper. The

199 rights of the parties filing the consent or served with process
200 shall be subject to the decree but shall not be divested until
201 entry of the final decree.

202 **SECTION 5.** This act shall take effect and be in force from
203 and after July 1, 2005.