

By: Representative Moore

To: Judiciary A

HOUSE BILL NO. 1036
(As Passed the House)

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; TO AMEND SECTION 93-17-3, MISSISSIPPI CODE OF 1972, TO
5 REQUIRE THAT ADOPTION PETITIONS SHALL BE ACCOMPANIED BY AFFIDAVITS
6 OF THE PETITIONERS STATING THE AMOUNT OF THE SERVICE FEES CHARGED
7 BY ANY ADOPTION AGENCIES OR ADOPTION FACILITATORS USED BY THE
8 PETITIONERS AND ANY OTHER EXPENSES PAID BY THE PETITIONERS IN THE
9 ADOPTION PROCESS AS OF THE TIME OF FILING THE PETITION; TO AMEND
10 SECTION 93-17-11, MISSISSIPPI CODE OF 1972, TO REQUIRE THAT IN ALL
11 ADOPTIONS OTHER THAN FAMILY ADOPTIONS, THE COURT MAY, IN ITS
12 DISCRETION, REQUIRE THAT A HOME STUDY BE PERFORMED BEFORE A FINAL
13 DECREE IS ENTERED IN THE PROCEEDING, AT THE PETITIONERS' SOLE
14 EXPENSE, TO DETERMINE WHETHER THE PETITIONERS ARE SUITABLE PARENTS
15 FOR THE CHILD; AND FOR RELATED PURPOSES.

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

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

19 43-15-107. (1) Except as provided in Section 43-15-111, no
20 person, agency, firm, corporation, association or other entity,
21 acting individually or jointly with any other person or entity,
22 may establish, conduct or maintain foster homes, residential
23 child-caring agencies and child-placing agencies or facility
24 and/or engage in child placing in this state without a valid and
25 current license issued by and under the authority of the division
26 as provided by this article and the rules of the division. Any
27 out-of-state child-placing agency that provides a full range of
28 services, including, but not limited to, adoptions, foster family
29 homes, adoption counseling services or financial aid, in this
30 state must be licensed by division under this article.

31 (2) No license issued under this article is assignable or
32 transferable.

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

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

39 (i) Previously revoked by the office; or

40 (ii) Voluntarily returned to the office by the
41 licensee.

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

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

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

52 43-15-117. (1) Except as provided in this article, no
53 person, agency, firm, corporation, association or group children's
54 home may engage in child placing, or solicit money or other
55 assistance for child placing, without a valid license issued by
56 the division. No out-of-state child-placing agency that provides
57 a full range of services, including, but not limited to,
58 adoptions, foster family homes, adoption counseling services or
59 financial aid, may operate in this state without a valid license
60 issued by the division. No child-placing agency shall advertise
61 in the media markets in Mississippi seeking birth mothers or their
62 children for adoption purposes unless the agency holds a valid and
63 current license issued either by the division or the authorized
64 governmental licensing agency of another state that regulates
65 child-placing agencies.

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

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

80 (4) The division is specifically authorized to promulgate
81 rules under the Administrative Procedures Law, Title 25, Chapter
82 43, Mississippi Code of 1972, to regulate fees charged by licensed
83 child-placing agencies, if it determines that the practices of
84 those licensed child-placing agencies demonstrates that the fees
85 charged are excessive or that any of the agency's practices are
86 deceptive or misleading; however, those rules regarding fees shall
87 take into account the use of any sliding fee by an agency that
88 uses a sliding fee procedure to permit prospective adoptive
89 parents of varying income levels to utilize the services of those
90 agencies or persons.

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

98 inform the division in writing thirty (30) days in advance of any
99 proposed changes to the fees or charges for those services.

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

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

108 93-17-3. (1) Any person may be adopted in accordance with
109 the provisions of this chapter in term time or in vacation by an
110 unmarried adult or by a married person whose spouse joins in the
111 petition, provided that the petitioner or petitioners have resided
112 in this state for ninety (90) days preceding the filing of the
113 petition. However, if the petitioner or petitioners, or one (1)
114 of them, are related to the child within the third degree
115 according to civil law, or if the adoption is presented to the
116 court by an adoption agency licensed by the State of Mississippi,
117 the residence restriction shall not apply. The adoption shall be
118 by sworn petition filed in the chancery court of the county in
119 which the adopting petitioner or petitioners reside or in which
120 the child to be adopted resides or was born, or was found when it
121 was abandoned or deserted, or in which the home is located to
122 which the child has been surrendered by a person authorized to so
123 do. The petition shall be accompanied by a doctor's or nurse
124 practitioner's certificate showing the physical and mental
125 condition of the child to be adopted and a sworn statement of all
126 property, if any, owned by the child. In addition, the petition
127 shall be accompanied by affidavits of the petitioner or
128 petitioners stating the amount of the service fees charged by any
129 adoption agencies or adoption facilitators used by the petitioner
130 or petitioners and any other expenses paid by the petitioner or

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

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

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

145 93-17-11. At any time after the filing of the petition for
146 adoption and completion of process thereon, and before the
147 entering of a final decree, the court may, in its discretion, of
148 its own motion or on motion of any party to the proceeding,
149 require an investigation * * * and report to the court to be made
150 by any person, officer or home as the court may designate and
151 direct concerning the child, and may, in its discretion, require
152 in all adoptions, other than those in which the petitioner or
153 petitioners are a relative or stepparent of the child, that a home
154 study be performed of the petitioner or petitioners by an adoption
155 agency licensed in this state, at the petitioner's or petitioners'
156 sole expense and at no cost to the state or county. The
157 investigation and report shall give the material facts upon which
158 the court may determine whether the child is a proper subject for
159 adoption, whether the petitioner or petitioners are suitable
160 parents for the child, whether the adoption is to its best
161 interest, and any other facts or circumstances that may be
162 material to the proposed adoption. The home study shall determine
163 whether the petitioner or petitioners are suitable parents for the

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

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

193 After the entry of the interlocutory decree and before entry
194 of the final decree, the court may require such further and
195 additional investigation and reports as it may deem proper. The
196 rights of the parties filing the consent or served with process

197 shall be subject to the decree but shall not be divested until
198 entry of the final decree.

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