

By: Representative Moore

To: Judiciary A

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 497

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
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. Any child-placing agency, physician or

66 attorney who advertises for child placing or adoption services in
67 Mississippi shall be required by the division to show their
68 principal office location on all media advertising for adoption
69 services.

70 (2) An attorney who provides legal services to a client in
71 connection with proceedings for the adoption of a child by the
72 client, who does not receive, accept or provide custody or care
73 for the child for the purposes specified in Section 43-15-103(c),
74 shall not be required to have a license under this article to
75 provide those legal services.

76 (3) An attorney, physician or other person may assist a
77 parent in identifying or locating a person interested in adopting
78 the parent's child, or in identifying or locating a child to be
79 adopted. However, no payment, charge, fee, reimbursement of
80 expense, or exchange of value of any kind, or promise or agreement
81 to make the same, may be made for that assistance.

82 (4) Nothing in this section precludes payment of reasonable
83 fees for medical, legal or other lawful services rendered in
84 connection with the care of a mother, delivery and care of a child
85 including, but not limited to, the mother's living expenses, or
86 counseling for the parents and/or the child, and for the legal
87 proceedings related to lawful adoption proceedings; and no
88 provision of this section abrogates the right of procedures for
89 independent adoption as provided by law.

90 (5) The division is specifically authorized to promulgate
91 rules under the Administrative Procedures Law, Title 25, Chapter
92 43, Mississippi Code of 1972, to regulate fees charged by licensed
93 child-placing agencies, if it determines that the practices of
94 those licensed child-placing agencies demonstrates that the fees
95 charged are excessive or that any of the agency's practices are
96 deceptive or misleading; however, those rules regarding fees shall
97 take into account the use of any sliding fee by an agency that
98 uses a sliding fee procedure to permit prospective adoptive

99 parents of varying income levels to utilize the services of those
100 agencies or persons.

101 (6) The division shall promulgate rules under the
102 Administrative Procedures Law, Title 25, Chapter 43, Mississippi
103 Code of 1972, to require that all licensed child-placing agencies
104 provide written disclosures to all prospective adoptive parents of
105 any fees or other charges for each service performed by the agency
106 or person, and file an annual report with the division that states
107 the fees and charges for those services, and to require them to
108 inform the division in writing thirty (30) days in advance of any
109 proposed changes to the fees or charges for those services.

110 (7) The division is specifically authorized to disclose to
111 prospective adoptive parents or other interested persons any fees
112 charged by any licensed child-placing agency, attorney or
113 counseling service or counselor for all legal and counseling
114 services provided by that licensed child-placing agency, attorney
115 or counseling service or counselor.

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

118 93-17-3. (1) Any person may be adopted in accordance with
119 the provisions of this chapter in term time or in vacation by an
120 unmarried adult or by a married person whose spouse joins in the
121 petition, provided that the petitioner or petitioners have resided
122 in this state for ninety (90) days preceding the filing of the
123 petition. However, if the petitioner or petitioners, or one (1)
124 of them, are related to the child within the third degree
125 according to civil law, or if the adoption is presented to the
126 court by an adoption agency licensed by the State of Mississippi,
127 the residence restriction shall not apply. The adoption shall be
128 by sworn petition filed in the chancery court of the county in
129 which the adopting petitioner or petitioners reside or in which
130 the child to be adopted resides or was born, or was found when it
131 was abandoned or deserted, or in which the home is located to

132 which the child has been surrendered by a person authorized to so
133 do. The petition shall be accompanied by a doctor's or nurse
134 practitioner's certificate showing the physical and mental
135 condition of the child to be adopted and a sworn statement of all
136 property, if any, owned by the child. If the doctor's or nurse
137 practitioner's certificate indicates any abnormal mental or
138 physical condition or defect, the condition or defect shall not in
139 the discretion of the chancellor bar the adoption of the child if
140 the adopting parent or parents file an affidavit stating full and
141 complete knowledge of the condition or defect and stating a desire
142 to adopt the child, notwithstanding the condition or defect. The
143 court shall have the power to change the name of the child as a
144 part of the adoption proceedings. The word "child" in this
145 section shall be construed to refer to the person to be adopted,
146 though an adult.

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

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

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

165 petitioners are suitable parents for the child, whether the
166 adoption is to its best interest, and any other facts or
167 circumstances that may be material to the proposed adoption. The
168 court, when an investigation and report are required by the court
169 or by this section, shall stay the proceedings in the cause for
170 such reasonable time as may be necessary or required in the
171 opinion of the court for the completion of the investigation and
172 report by the person, officer or home designated and authorized to
173 make the same.

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

197 After the entry of the interlocutory decree and before entry
198 of the final decree, the court may require such further and
199 additional investigation and reports as it may deem proper. The
200 rights of the parties filing the consent or served with process
201 shall be subject to the decree but shall not be divested until
202 entry of the final decree.

203 **SECTION 5.** This act shall take effect and be in force from
204 and after July 1, 2006.