

By: Representative Barnett

To: Judiciary A

HOUSE BILL NO. 920

1 AN ACT TO AMEND SECTIONS 93-17-5, 93-17-13, 93-17-25,
2 93-17-205, 93-17-207, 93-17-209, 93-17-215, 93-17-217, 93-17-219
3 AND 93-17-223, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT AN
4 ADOPTED CHILD WHO IS AGE EIGHTEEN YEARS OR OLDER SHALL HAVE THE
5 RIGHT TO KNOW THE IDENTITY OF THE BIOLOGICAL PARENTS OF SUCH
6 CHILD; TO PROVIDE SUCH INFORMATION TO SIBLINGS, PARENTS, OFFSPRING
7 AND GUARDIANS OR CUSTODIANS; AND FOR RELATED PURPOSES.

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

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

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

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

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

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

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

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

42 (3) In the case of a child born out of wedlock, the father
43 shall not have a right to object to an adoption unless he has
44 demonstrated, within the period ending thirty (30) days after the
45 birth of the child, a full commitment to the responsibilities of
46 parenthood. Determination of the rights of the father of a child
47 born out of wedlock may be made in proceedings pursuant to a
48 petition for determination of rights as provided in Section
49 93-17-6. If an adopted child aged eighteen (18) years or older
50 wishes to know the identity of the biological father of such
51 child, such information shall be provided to the child.

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

62 service of process shall be had upon the child in the same manner
63 and in the same effect as if it were an adult.

64 **SECTION 2.** Section 93-17-13, Mississippi Code of 1972, is
65 amended as follows:

66 93-17-13. A final decree of adoption shall not be entered
67 before the expiration of six (6) months from the entry of the
68 interlocutory decree except (a) when a child is a stepchild of a
69 petitioner or is related by blood to the petitioner within the
70 third degree according to the rules of the civil law or in any
71 case in which the chancellor in the exercise of his discretion
72 shall determine from all the proceedings and evidence in said
73 cause that the six-month waiting period is not necessary or
74 required for the benefit of the court, the petitioners or the
75 child to be adopted, and shall so adjudicate in the decree entered
76 in said cause, in either of which cases the final decree may be
77 entered immediately without any delay and without an interlocutory
78 decree, or (b) when the child has resided in the home of any
79 petitioner prior to the granting of the interlocutory decree, in
80 which case the court may, in its discretion, shorten the waiting
81 period by the length of time the child has thus resided.

82 The final decree shall adjudicate, in addition to such other
83 provisions as may be found by the court to be proper for the
84 protection of the interests of the child; and its effect, unless
85 otherwise specifically provided, shall be that (a) the child shall
86 inherit from and through the adopting parents and shall likewise
87 inherit from the other children of the adopting parents to the
88 same extent and under the same conditions as provided for the
89 inheritance between brothers and sisters of the full blood by the
90 laws of descent and distribution of the State of Mississippi, and
91 that the adopting parents and their other children shall inherit
92 from the child, just as if such child had been born to the
93 adopting parents in lawful wedlock; (b) the child and the adopting
94 parents and adoptive kindred are vested with all of the rights,

95 powers, duties and obligations, respectively, as if such child had
96 been born to the adopting parents in lawful wedlock, including all
97 rights existing by virtue of Section 11-7-13, Mississippi Code of
98 1972; provided, however, that inheritance by or from the adopted
99 child shall be governed by subsection (a) above; (c) that the name
100 of the child shall be changed if desired; and (d) that the natural
101 parents and natural kindred of the child shall not inherit by or
102 through the child except as to a natural parent who is the spouse
103 of the adopting parent, and all parental rights of the natural
104 parent, or parents, shall be terminated, except as to a natural
105 parent who is the spouse of the adopting parent. Nothing in this
106 chapter shall restrict the right of any person to dispose of
107 property under a last will and testament.

108 An adopted child aged eighteen (18) years of age or older
109 shall have the right to be provided the identity of the biological
110 parents of such child.

111 **SECTION 3.** Section 93-17-25, Mississippi Code of 1972, is
112 amended as follows:

113 93-17-25. All proceedings under this chapter shall be
114 confidential and shall be held in closed court without admittance
115 of any person other than the interested parties, except upon order
116 of the court. All pleadings, reports, files and records
117 pertaining to adopting proceedings shall be confidential and shall
118 not be public records and shall be withheld from inspection or
119 examination by any person, except upon order of the court in which
120 the proceeding was had on good cause shown.

121 Upon motion of any interested person, the files of adoption
122 proceedings, heretofore had may be placed in the confidential
123 files upon order of the court or chancellor and shall be subject
124 to the provisions of this chapter.

125 Provided, however, that notwithstanding the confidential
126 nature of said proceedings, said record shall be available for use
127 in any court or administrative proceedings under a subpoena duces

tecum addressed to the custodian of said records and portions of such record may be released pursuant to Sections 93-17-201 through 93-17-223.

An adopted child aged eighteen (18) years or older shall have the right to be provided the identity of his or her biological parents.

SECTION 4. Section 93-17-205, Mississippi Code of 1972, is amended as follows:

93-17-205. (1) The bureau shall maintain a centralized adoption records file for all adoptions performed in this state after July 1, 2005, which shall include the following information:

(a) The medical and social history of the birth parents, including information regarding genetically inheritable diseases or illnesses and any similar information furnished by the birth parents about the adoptee's grandparents, aunts, uncles, brothers and sisters;

(b) A report of any medical examination which either birth parent had within one (1) year before the date of the petition for adoption, if available;

(c) A report describing the adoptee's prenatal care and medical condition at birth, if available; and

(d) The medical and social history of the adoptee, including information regarding genetically inheritable diseases or illnesses, and any other relevant medical, social and genetic information.

The Administrative Office of Courts shall assist the bureau in the maintenance of its centralized adoption record by compiling the number of finalized adoptions in each chancery court district on a monthly basis, and submitting this information to the bureau. The bureau shall include these statistics in its centralized adoption record. The information in this report shall include the number of adoptions in this state where the adopting parent is a blood relative of the adoptee and the number of adoptions in this

state where the adopting parent is not a blood relative of the adoptee. The report shall not include any individual identifying information. This information shall be updated annually and made available to the public upon request for a reasonable fee.

(2) Any birth parent may file with the bureau at any time any relevant supplemental nonidentifying information about the adoptee or the adoptee's birth parents, and the bureau shall maintain this information in the centralized adoption records file.

(3) The bureau shall also maintain as part of the centralized adoption records file the following:

(a) The name, date of birth, social security number (both original and revised, where applicable) and birth certificate (both original and revised) of the adoptee;

(b) The names, current addresses and social security numbers of the adoptee's birth parents, guardian and legal custodian;

(c) Any other available information about the birth parent's identity and location.

(4) Each birth parent shall file with the bureau at any time an affidavit authorizing the bureau to provide an adoptee aged eighteen (18) years or older with his or her original birth certificate and with any other available information about the birth parent's identity. The birth parent also may file an affidavit expressly prohibiting the bureau from providing an adoptee under the age of eighteen (18) years with any information about such birth parent's identity and location, and prohibiting any licensed adoption agency from conducting a search for the birth parent on behalf of an adoptee under the age of eighteen (18) years, under the terms of Sections 93-17-201 through 93-17-223. An affidavit filed under this section may be revoked at any time by written notification to the bureau from the birth parent.

(5) Counsel for the adoptive parents in the adoption finalization proceeding shall provide the bureau with the information required in subsections (1) and (3) of this section, and he shall also make such information a part of the adoption records of the court in which the final decree of adoption is rendered. This information shall be provided on forms prepared by the bureau.

(6) (a) If an agency receives a report from a physician stating that a birth parent or another child of the birth parent has acquired or may have a genetically transferable disease or illness, the agency shall notify the bureau and the appropriate licensed adoption agency, and the latter agency shall notify the adoptee of the existence of the disease or illness, if he or she is twenty-one (21) years of age or over, or notify the adoptee's guardian, custodian or adoptive parent if the adoptee is under age twenty-one (21).

(b) If an agency receives a report from a physician that an adoptee has acquired or may have a genetically transferable disease or illness, the agency shall notify the bureau and the appropriate licensed agency, and the latter agency shall notify the adoptee's birth parent of the existence of the disease or illness.

(7) Compliance with the provisions of this section may be waived by the court, in its discretion, in any chancery court proceeding in which one or more of the petitioners for adoption is the natural mother or father of the adoptee.

SECTION 5. Section 93-17-207, Mississippi Code of 1972, is amended as follows:

93-17-207. (1) The bureau or the agency shall release the nonidentifying, or identifying information as may be authorized for an adoptee aged eighteen (18) years or older, maintained as provided in Section 93-17-205 for a reasonable fee, including the

actual cost of reproduction, to any of the following persons upon request made with sufficient proof of identity:

- (a) An adoptee eighteen (18) years of age or older;
- (b) An adoptive parent;
- (c) The guardian or legal custodian of an adoptee; or
- (d) The offspring or blood sibling of an adoptee if the requester is eighteen (18) years of age or older.

(2) Information released pursuant to subsection (1) of this section shall * * * include the name and address of the birth parent, the identity of any provider of health care to the adoptee or to the birth parent and any other information which might reasonably lead to the discovery of the identity of either birth parent.

SECTION 6. Section 93-17-209, Mississippi Code of 1972, is amended as follows:

93-17-209. (1) Whenever any person specified under Section 93-17-207 wishes to obtain medical, social or genetic background information about an adoptee or nonidentifying information about the birth parents of such adoptee, or whenever an adoptee aged eighteen (18) years or older wishes to obtain identifying, medical, social or background information, and the information is not on file with the bureau and the birth parents have not filed affidavits prohibiting a search to be conducted for them under the provisions of Sections 93-17-201 through 93-17-223, the person may request a licensed adoption agency to locate the birth parents to obtain the information.

(2) Employees of any agency conducting a search under this section may not inform any person other than the birth parents of the purpose of the search.

(3) The agency may charge the requester a reasonable fee for the cost of the search. When the agency determines that the fee will exceed One Hundred Dollars (\$100.00) for either birth parent, it shall notify the requester. No fee in excess of One Hundred

Dollars (\$100.00) per birth parent may be charged unless the requester, after receiving notification under this paragraph, has given consent to proceed with the search.

(4) The agency conducting the search shall, upon locating a birth parent, notify him or her of the request and of the need for medical, social, genetic or identifying information.

(5) The agency shall release to the requester any medical or genetic information provided by a birth parent under this section without disclosing the birth parent's identity or location, unless the requester is the child aged eighteen (18) years or older and in that case identifying information shall be provided.

(6) If a birth parent is located but refuses to provide the information requested, the agency shall notify the requester, without disclosing the birth parent's identity or location, and the requester may petition the chancery court to order the birth parent to disclose the nonidentifying information or identifying information if the requester is the child aged eighteen (18) years or older. The court shall grant the motion for good cause shown and if the requester is an adopted child aged eighteen (18) years or older good cause shall be presumed.

(7) The Mississippi Department of Human Services shall provide the bureau each year with a list of licensed adoption agencies in this state capable of performing the types of searches described in this section.

SECTION 7. Section 93-17-215, Mississippi Code of 1972, is amended as follows:

93-17-215. Any person eighteen (18) years of age or older who has been adopted in this state may request the bureau through a licensed adoption agency providing post-adoption services to obtain and provide the identifying information regarding either or both of his or her birth parents maintained as provided in Section 93-17-205 * * *.

291 **SECTION 8.** Section 93-17-217, Mississippi Code of 1972, is
292 amended as follows:

293 93-17-217. Provided the birth parent has not filed an
294 affidavit prohibiting the release of identifying information to an
295 adopted child under the age of eighteen (18) years and before
296 acting on a request made pursuant to Section 93-17-209 or Section
297 93-17-215, the agency shall require the adoptee to provide
298 adequate identification and to submit to counseling by such agency
299 in connection with the release and use of this information. The
300 bureau shall release the requested information to the designated
301 agency upon request by such agency.

302 **SECTION 9.** Section 93-17-219, Mississippi Code of 1972, is
303 amended as follows:

304 93-17-219. (1) With regard to an adoptee under eighteen
305 (18) years of age, if the bureau does not have on file (a) an
306 affidavit either authorizing or prohibiting release of identifying
307 information * * * and any further contact from each known birth
308 parent for whom information is sought, or (b) a notice that such
309 birth parent has been contacted once and has refused to authorize
310 the release of confidential information, then the adoptee may
311 request the agency to undertake a search for the birth parent who
312 has not filed an affidavit or who has not been contacted. With
313 regard to an adoptee aged eighteen (18) years or older, the
314 adoptee may request the agency to undertake a search for his or
315 her birth parent. The licensed agency shall not inform any person
316 other than the birth parents of the purpose of the search.

317 (2) The licensed agency may charge the adoptee a reasonable
318 fee for the cost of the search. When the agency determines that
319 the fee will exceed One Hundred Dollars (\$100.00) for either birth
320 parent, it shall notify the adoptee. No fee in excess of One
321 Hundred Dollars (\$100.00) per birth parent may be charged unless
322 the adoptee, after receiving notification under this paragraph,
323 has given consent to proceed with the search.

(3) Upon locating a birth parent the licensed agency conducting the search shall make at least one (1) verbal contact and notify him or her of the following:

(a) The nature of the information requested;

(b) The date of the request; and

(c) The fact that the birth parent, as determined by the age of the adoptee, shall consent to or may prohibit the release of this information by filing with the bureau the affidavit to this effect.

(4) Within three (3) working days after contacting a birth parent, the licensed agency shall provide the birth parent with a written statement of the information requested and an affidavit form requiring or prohibiting the release of the requested information. If the birth parent of an adoptee under the age of eighteen (18) authorizes the release of the information or if the adoptee is aged eighteen (18) or over, the licensed agency shall disclose the requested information about that birth parent.

(5) If a licensed agency has contacted a birth parent as provided by this section, and the birth parent does not file the affidavit, the agency shall not disclose the requested information to any person other than the adoptee aged eighteen (18) or over.

(6) If, after a search under this section, a known birth parent cannot be located, the agency shall not disclose the requested identifying information about that birth parent to any person except the adoptee or persons authorized under Section 93-17-207, although it may disclose any available nonidentifying information regarding that birth parent, and it may disclose identifying information about the other birth parent if such other birth parent has signed an unrevoked affidavit authorizing such release. If the adoptee is under the age of eighteen (18), and his or her birth parent is located and refuses to authorize the release of identifying information, the agency locating this birth

356 parent shall notify the bureau. The bureau shall note such
357 contact and refusal in its records.

358 (7) Until an adoptee reaches the age of eighteen (18) years,
359 only one (1) contact shall be made with a birth parent pursuant to
360 a search request under this section if the birth parent refuses to
361 authorize the release of the requested information. Further
362 contacts with a birth parent under this section on behalf of the
363 same adoptee shall be prohibited until such time as the adoptee
364 reaches the age of eighteen (18) years.

365 **SECTION 10.** Section 93-17-223, Mississippi Code of 1972, is
366 amended as follows:

367 93-17-223. In cases where the adoptee is under the age of
368 eighteen (18) years and only one (1) of the birth parents has
369 authorized the release of identifying information, that birth
370 parent shall be prohibited from divulging to the adoptee the
371 identity, or any information reasonably calculated to lead to
372 discovery of the identity, of the other birth parent, and shall
373 execute a sworn affidavit stating that no such information shall
374 be revealed. The refusal of any birth parent to comply with this
375 prohibition shall constitute an act of bad faith under the terms
376 of Sections 93-17-201 through 93-17-223, and such birth parent
377 shall be subject to civil liability for the release of such
378 information.

379 **SECTION 11.** This act shall take effect and be in force from
380 and after July 1, 2006.