

By: Senator(s) Nunnelee

To: Judiciary, Division A

SENATE BILL NO. 2538

1 AN ACT TO AMEND SECTIONS 93-17-5 AND 93-17-6, MISSISSIPPI
2 CODE OF 1972, TO REDUCE THE PERIOD OF TIME FOR OBJECTION TO AN
3 ADOPTION BY THE BIRTH FATHER OF A CHILD BORN OUT OF WEDLOCK; AND
4 FOR RELATED PURPOSES.

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

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

8 93-17-5. (1) There shall be made parties to the proceeding
9 by process or by the filing therein of a consent to the adoption
10 proposed in the petition, which consent shall be duly sworn to or
11 acknowledged and executed only by the following persons, but not
12 before seventy-two (72) hours after the birth of said child: (a)
13 the parents, or parent, if only one (1) parent, though either be
14 under the age of twenty-one (21) years; or (b) in the event both
15 parents are dead, then any two (2) adult kin of the child within
16 the third degree computed according to the civil law, provided
17 that, if one of such kin is in possession of the child, he or she
18 shall join in the petition or be made a party to the suit; or, (c)
19 the guardian ad litem of an abandoned child, upon petition showing
20 that the names of the parents of such child are unknown after
21 diligent search and inquiry by the petitioners. In addition to
22 the above, there shall be made parties to any proceeding to adopt
23 a child, either by process or by the filing of a consent to the
24 adoption proposed in the petition, the following:

25 (i) Those persons having physical custody of such
26 child, except persons having such child as foster parents as a
27 result of placement with them by the Department of Human Services
28 of the State of Mississippi.

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

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

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

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

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

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

61 93-17-6. (1) Any person who would be a necessary party to
62 an adoption proceeding under this chapter and any person alleged
63 or claiming to be the father of a child born out of wedlock who is
64 proposed for adoption or who has been determined to be such by any
65 administrative or judicial procedure (the "alleged father") may
66 file a petition for determination of rights as a preliminary
67 pleading to a petition for adoption in any court which would have
68 jurisdiction and venue of an adoption proceeding. A petition for
69 determination of rights may be filed at any time after the period
70 ending three (3) days after the birth of the child. Should
71 competing petitions be filed in two (2) or more courts having
72 jurisdiction and venue, the court in which the first such petition
73 was properly filed shall have jurisdiction over the whole
74 proceeding until its disposition. The prospective adopting
75 parents need not be a party to such petition. Where the child's
76 biological mother has surrendered the child to a home for
77 adoption, the home may represent the biological mother and her
78 interests in this proceeding.

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

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

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

90 (a) Provided financial support, including, but not
91 limited to, the payment of consistent support to the mother during
92 her pregnancy, contributions to the payment of the medical
93 expenses of pregnancy and birth, and contributions of consistent

94 support of the child after birth; that he frequently and
95 consistently visited the child after birth; and that he is now
96 willing and able to assume legal and physical care of the child;
97 or

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

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

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

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

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

121 (9) Service of process in the adoption of a foreign born
122 child shall be governed by Section 93-15-105(5).

123 **SECTION 3.** This act shall take effect and be in force from
124 and after July 1, 2006.