

By: Representatives Holland, Peranich

To: Public Health and Human  
Services

## HOUSE BILL NO. 1536

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 PROVIDE THAT THE LICENSES OF MISSISSIPPI  
5 CHILD-PLACING AGENCIES IN GOOD STANDING SHALL EXPIRE 24 MONTHS  
6 FROM THE DATE OF ISSUANCE; TO AMEND SECTION 93-17-11, MISSISSIPPI  
7 CODE OF 1972, TO PROVIDE THAT IN ADOPTIONS OTHER THAN FAMILY  
8 ADOPTIONS, THE COURT SHALL REQUIRE THAT A HOME STUDY BE PERFORMED  
9 BEFORE A FINAL DECREE IS ENTERED IN THE PROCEEDING, AT THE  
10 PETITIONERS' SOLE EXPENSE, TO DETERMINE WHETHER THE PETITIONERS  
11 ARE SUITABLE PARENTS FOR THE CHILD; TO AMEND SECTION 93-17-3,  
12 MISSISSIPPI CODE OF 1972, TO REQUIRE THAT ADOPTION PETITIONS SHALL  
13 BE ACCOMPANIED BY AFFIDAVITS OF THE PETITIONERS STATING THE AMOUNT  
14 OF THE SERVICE FEES CHARGED BY ANY ADOPTION AGENCIES OR ADOPTION  
15 FACILITATORS USED BY THE PETITIONERS AND ANY OTHER EXPENSES PAID  
16 BY THE PETITIONERS IN THE ADOPTION PROCESS AS OF THE TIME OF  
17 FILING THE PETITION; TO AMEND SECTIONS 93-17-12 AND 93-17-13,  
18 MISSISSIPPI CODE OF 1972, TO CONFORM TO THE PRECEDING PROVISIONS;  
19 TO PROVIDE THAT HOME STUDIES IN INTERNATIONAL ADOPTIONS SHALL BE  
20 VALID FOR 18 MONTHS; AND FOR RELATED PURPOSES.

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

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

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

36 (2) No license issued under this article is assignable or  
37 transferable.

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

41 (4) (a) Except as otherwise provided in paragraph (b) of  
42 this subsection, each license issued under this article expires at  
43 midnight (Central Standard Time) twelve (12) months from the date  
44 of issuance unless it has been:

45 (i) Previously revoked by the office; or  
46 (ii) Voluntarily returned to the office by the  
47 licensee.

48 (b) (i) For any child-placing agency located in  
49 Mississippi that remains in good standing, the license issued  
50 under this article expires at midnight (Central Standard Time)  
51 twenty-four (24) months from the date of issuance unless it has  
52 been:

53 1. Previously revoked by the office; or  
54 2. Voluntarily returned to the office by the  
55 licensee.

56 (ii) Any child-placing agency whose license is  
57 governed by this paragraph (b) shall submit the following  
58 information to the office annually:

59 1. A copy of an audit report and IRS Form 990  
60 for the agency;

61 2. The agency's fee schedule; and

62 3. The agency's client list.

63 (c) A license may be renewed upon application and  
64 payment of the applicable fee, provided that the licensee meets  
65 the license requirements established by this article and the rules  
66 and regulations of the division.

67 (5) Any licensee or facility which is in operation at the  
68 time rules are made in accordance with this article shall be given

69 a reasonable time for compliance as determined by the rules of the  
70 division.

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

73 43-15-117. (1) Except as provided in this article, no  
74 person, agency, firm, corporation, association or group children's  
75 home may engage in child placing, or solicit money or other  
76 assistance for child placing, without a valid license issued by  
77 the division. No out-of-state child-placing agency that provides  
78 a full range of services, including, but not limited to,  
79 adoptions, foster family homes, adoption counseling services or  
80 financial aid, may operate in this state without a valid license  
81 issued by the division. No child-placing agency shall advertise  
82 in the media markets in Mississippi seeking birth mothers or their  
83 children for adoption purposes unless the agency holds a valid and  
84 current license issued either by the division or the authorized  
85 governmental licensing agency of another state that regulates  
86 child-placing agencies. Any child-placing agency, physician or  
87 attorney who advertises for child placing or adoption services in  
88 Mississippi shall be required by the division to show their  
89 principal office location on all media advertising for adoption  
90 services.

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

97 (3) An attorney, physician or other person may assist a  
98 parent in identifying or locating a person interested in adopting  
99 the parent's child, or in identifying or locating a child to be  
100 adopted. However, no payment, charge, fee, reimbursement of

101 expense, or exchange of value of any kind, or promise or agreement  
102 to make the same, may be made for that assistance.

103 (4) Nothing in this section precludes payment of reasonable  
104 fees for medical, legal or other lawful services rendered in  
105 connection with the care of a mother, delivery and care of a child  
106 including, but not limited to, the mother's living expenses, or  
107 counseling for the parents and/or the child, and for the legal  
108 proceedings related to lawful adoption proceedings; and no  
109 provision of this section abrogates the right of procedures for  
110 independent adoption as provided by law.

111 (5) The division is specifically authorized to promulgate  
112 rules under the Administrative Procedures Law, Title 25, Chapter  
113 43, Mississippi Code of 1972, to regulate fees charged by licensed  
114 child-placing agencies, if it determines that the practices of  
115 those licensed child-placing agencies demonstrates that the fees  
116 charged are excessive or that any of the agency's practices are  
117 deceptive or misleading; however, those rules regarding fees shall  
118 take into account the use of any sliding fee by an agency that  
119 uses a sliding fee procedure to permit prospective adoptive  
120 parents of varying income levels to utilize the services of those  
121 agencies or persons.

122 (6) The division shall promulgate rules under the  
123 Administrative Procedures Law, Title 25, Chapter 43, Mississippi  
124 Code of 1972, to require that all licensed child-placing agencies  
125 provide written disclosures to all prospective adoptive parents of  
126 any fees or other charges for each service performed by the agency  
127 or person, and file an annual report with the division that states  
128 the fees and charges for those services, and to require them to  
129 inform the division in writing thirty (30) days in advance of any  
130 proposed changes to the fees or charges for those services.

131 (7) The division is specifically authorized to disclose to  
132 prospective adoptive parents or other interested persons any fees  
133 charged by any licensed child-placing agency, attorney or

134 counseling service or counselor for all legal and counseling  
135 services provided by that licensed child-placing agency, attorney  
136 or counseling service or counselor.

137         **SECTION 3.** Section 93-17-11, Mississippi Code of 1972, is  
138 amended as follows:

139         93-17-11. At any time after the filing of the petition for  
140 adoption and completion of process thereon, and before the  
141 entering of a final decree, the court may, in its discretion, of  
142 its own motion or on motion of any party to the proceeding,  
143 require an investigation \* \* \* and report to the court to be made  
144 by any person, officer or home as the court may designate and  
145 direct concerning the child, and shall require in adoptions, other  
146 than those in which the petitioner or petitioners are a relative  
147 or stepparent of the child, that a home study be performed of the  
148 petitioner or petitioners by an adoption agency licensed in this  
149 state, at the petitioner's or petitioners' sole expense and at no  
150 cost to the state or county. The investigation and report shall  
151 give the material facts upon which the court may determine whether  
152 the child is a proper subject for adoption, whether the petitioner  
153 or petitioners are suitable parents for the child, whether the  
154 adoption is to its best interest, and any other facts or  
155 circumstances that may be material to the proposed adoption. The  
156 home study shall determine whether the petitioner or petitioners  
157 are suitable parents for the child. The court, when an  
158 investigation and report are required by the court or by this  
159 section, shall stay the proceedings in the cause for such  
160 reasonable time as may be necessary or required in the opinion of  
161 the court for the completion of the investigation and report by  
162 the person, officer or home designated and authorized to make the  
163 same.

164         Upon the filing of that consent or the completion of the  
165 process and the filing of the investigation and report, if  
166 required by the court or by this section, and the presentation of

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

187       After the entry of the interlocutory decree and before entry  
188 of the final decree, the court may require such further and  
189 additional investigation and reports as it may deem proper. The  
190 rights of the parties filing the consent or served with process  
191 shall be subject to the decree but shall not be divested until  
192 entry of the final decree.

193       **SECTION 4.** Section 93-17-3, Mississippi Code of 1972, is  
194 amended as follows:

195       93-17-3. (1) Except as otherwise provided in subsections  
196 (2) and (3), a court of this state has jurisdiction over a  
197 proceeding for the adoption of a minor commenced under this  
198 chapter if:

199           (a) Immediately before commencement of the proceeding,  
200 the minor lived in this state with a parent, a guardian, a  
201 prospective adoptive parent or another person acting as parent,  
202 for at least six (6) consecutive months, excluding periods of  
203 temporary absence, or, in the case of a minor under six (6) months  
204 of age, lived in this state from soon after birth with any of  
205 those individuals and there is available in this state substantial  
206 evidence concerning the minor's present or future care;

207           (b) Immediately before commencement of the proceeding,  
208 the prospective adoptive parent lived in this state for at least  
209 six (6) consecutive months, excluding periods of temporary  
210 absence, and there is available in this state substantial evidence  
211 concerning the minor's present or future care;

212           (c) The agency that placed the minor for adoption is  
213 licensed in this state and it is in the best interest of the minor  
214 that a court of this state assume jurisdiction because:

215                 (i) The minor and the minor's parents, or the  
216 minor and the prospective adoptive parent, have a significant  
217 connection with this state; and

218                 (ii) There is available in this state substantial  
219 evidence concerning the minor's present or future care;

220           (d) The minor and the prospective adoptive parent are  
221 physically present in this state and the minor has been abandoned  
222 or it is necessary in an emergency to protect the minor because  
223 the minor has been subjected to or threatened with mistreatment or  
224 abuse or is otherwise neglected; or

225           (e) It appears that no other state would have  
226 jurisdiction under prerequisites substantially in accordance with  
227 paragraphs (a) through (d), or another state has declined to  
228 exercise jurisdiction on the ground that this state is the more  
229 appropriate forum to hear a petition for adoption of the minor,  
230 and it is in the best interest of the minor that a court of this  
231 state assume jurisdiction.

232           (2) A court of this state may not exercise jurisdiction over  
233 a proceeding for adoption of a minor if, at the time the petition  
234 for adoption is filed, a proceeding concerning the custody or  
235 adoption of the minor is pending in a court of another state  
236 exercising jurisdiction substantially in conformity with the  
237 Uniform Child Custody Jurisdiction Act or this section unless the  
238 proceeding is stayed by the court of the other state.

239           (3) If a court of another state has issued a decree or order  
240 concerning the custody of a minor who may be the subject of a  
241 proceeding for adoption in this state, a court of this state may  
242 not exercise jurisdiction over a proceeding for adoption of the  
243 minor unless:

244           (a) The court of this state finds that the court of the  
245 state which issued the decree or order:

246                   (i) Does not have continuing jurisdiction to  
247 modify the decree or order under jurisdictional prerequisites  
248 substantially in accordance with the Uniform Child Custody  
249 Jurisdiction Act or has declined to assume jurisdiction to  
250 modify the decree or order; or

251                   (ii) Does not have jurisdiction over a proceeding  
252 for adoption substantially in conformity with subsection (1)(a)  
253 through (d) or has declined to assume jurisdiction over a  
254 proceeding for adoption; and

255           (b) The court of this state has jurisdiction over the  
256 proceeding.

257           (4) Any person may be adopted in accordance with the  
258 provisions of this chapter in term time or in vacation by an  
259 unmarried adult or by a married person whose spouse joins in the  
260 petition. The adoption shall be by sworn petition filed in the  
261 chancery court of the county in which the adopting petitioner or  
262 petitioners reside or in which the child to be adopted resides or  
263 was born, or was found when it was abandoned or deserted, or in  
264 which the home is located to which the child has been surrendered



265 by a person authorized to so do. The petition shall be  
266 accompanied by a doctor's or nurse practitioner's certificate  
267 showing the physical and mental condition of the child to be  
268 adopted and a sworn statement of all property, if any, owned by  
269 the child. In addition, the petition shall be accompanied by  
270 affidavits of the petitioner or petitioners stating the amount of  
271 the service fees charged by any adoption agencies or adoption  
272 facilitators used by the petitioner or petitioners and any other  
273 expenses paid by the petitioner or petitioners in the adoption  
274 process as of the time of filing the petition. If the doctor's or  
275 nurse practitioner's certificate indicates any abnormal mental or  
276 physical condition or defect, the condition or defect shall not in  
277 the discretion of the chancellor bar the adoption of the child if  
278 the adopting parent or parents file an affidavit stating full and  
279 complete knowledge of the condition or defect and stating a desire  
280 to adopt the child, notwithstanding the condition or defect. The  
281 court shall have the power to change the name of the child as a  
282 part of the adoption proceedings. The word "child" in this  
283 section shall be construed to refer to the person to be adopted,  
284 though an adult.

285 (5) Adoption by couples of the same gender is prohibited.

286 (6) No person may be adopted before a court ordered home  
287 study of the prospective adopting parties is satisfactorily  
288 completed, as provided in Section 93-17-11.

289 **SECTION 5.** Section 93-17-12, Mississippi Code of 1972, is  
290 amended as follows:

291 93-17-12. In any child custody matter hereafter filed in any  
292 chancery or county court in which temporary or permanent custody  
293 has already been placed with a parent or guardian and in all other  
294 adoptions, the court shall impose a fee for any court-ordered home  
295 study performed by the Department of Human Services or any other  
296 entity. The fee shall be assessed upon either party or upon both  
297 parties in the court's discretion. The minimum fee imposed shall

298 be not less than Three Hundred Fifty Dollars (\$350.00) for each  
299 household on which a home study is performed. The fee shall be  
300 paid directly to the Mississippi Department of Human Services  
301 prior to the home study being conducted by the department or to  
302 the court of the study is performed by another entity. The judge  
303 may order the fee be paid by one or both of the parents or  
304 guardian. If the court determines that both parents or the  
305 guardian are unable to pay the fee, the judge shall waive the fee  
306 and the cost of the home study shall be defrayed by the Department  
307 of Human Services.

308 **SECTION 6.** Section 93-17-13, Mississippi Code of 1972, is  
309 amended as follows:

310 93-17-13. A final decree of adoption shall not be entered  
311 before the expiration of six (6) months from the entry of the  
312 interlocutory decree except (a) when a child is a stepchild of a  
313 petitioner or is related by blood to the petitioner within the  
314 third degree according to the rules of the civil law or in any  
315 case in which the chancellor in the exercise of his discretion  
316 shall determine from all the proceedings and evidence in said  
317 cause that the six-month waiting period is not necessary or  
318 required for the benefit of the court, the petitioners or the  
319 child to be adopted, and shall so adjudicate in the decree entered  
320 in said cause, in either of which cases the final decree may be  
321 entered immediately without any delay and without an interlocutory  
322 decree, or (b) when the child has resided in the home of any  
323 petitioner prior to the granting of the interlocutory decree, in  
324 which case the court may, in its discretion, shorten the waiting  
325 period by the length of time the child has thus resided.

326 The final decree shall adjudicate, in addition to such other  
327 provisions as may be found by the court to be proper for the  
328 protection of the interests of the child; and its effect, unless  
329 otherwise specifically provided, shall be that (a) the child shall  
330 inherit from and through the adopting parents and shall likewise

331 inherit from the other children of the adopting parents to the  
332 same extent and under the same conditions as provided for the  
333 inheritance between brothers and sisters of the full blood by the  
334 laws of descent and distribution of the State of Mississippi, and  
335 that the adopting parents and their other children shall inherit  
336 from the child, just as if such child had been born to the  
337 adopting parents in lawful wedlock; (b) the child and the adopting  
338 parents and adoptive kindred are vested with all of the rights,  
339 powers, duties and obligations, respectively, as if such child had  
340 been born to the adopting parents in lawful wedlock, including all  
341 rights existing by virtue of Section 11-7-13, Mississippi Code of  
342 1972; provided, however, that inheritance by or from the adopted  
343 child shall be governed by subsection (a) above; (c) that the name  
344 of the child shall be changed if desired; and (d) that the natural  
345 parents and natural kindred of the child shall not inherit by or  
346 through the child except as to a natural parent who is the spouse  
347 of the adopting parent, and all parental rights of the natural  
348 parent, or parents, shall be terminated, except as to a natural  
349 parent who is the spouse of the adopting parent. Nothing in this  
350 chapter shall restrict the right of any person to dispose of  
351 property under a last will and testament.

352 A final decree of adoption shall not be entered until a  
353 court-ordered home study is satisfactorily completed, as provided  
354 in Section 93-17-11.

355 **SECTION 7.** In the case of international adoptions, a home  
356 study of the prospective adopting parents shall be valid for a  
357 period of eighteen (18) months from the date of completion.

358 **SECTION 8.** This act shall take effect and be in force from  
359 and after July 1, 2007.