To: Public Health and Human Services

MISSISSIPPI LEGISLATURE
REGULAR SESSION 2007

By: Representatives Holland, Peranich

-house bill no. 1536
(As Sent to Governor)

AN ACT TO AMEND SECTIONS 43-15-107 AND 43-15-117, MISSISSIPPI CODE OF 1972, TO REQUIRE OUT-OF-STATE CHILD-PLACING AGENCIES THAT PROVIDE A FULL RANGE OF SERVICES IN MISSISSIPPI TO BE LICENSED IN THIS STATE; TO PROVIDE THAT THE LICENSES OF MISSISSIPPI CHILD-PLACING AGENCIES IN GOOD STANDING SHALL EXPIRE 24 MONTHS FROM THE DATE OF ISSUANCE; TO AMEND SECTION 93-17-11, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT IN ADOPTIONS OTHER THAN FAMILY ADOPTIONS, THE COURT SHALL REQUIRE THAT A HOME STUDY BE PERFORMED BEFORE A FINAL DECREE IS ENTERED IN THE PROCEEDING, AT THE PETITIONERS' SOLE EXPENSE, TO DETERMINE WHETHER THE PETITIONERS ARE SUITABLE PARENTS FOR THE CHILD; TO AMEND SECTION 93-17-3, MISSISSIPPI CODE OF 1972, TO REQUIRE THAT ADOPTION PETITIONS SHALL BE ACCOMPANIED BY AFFIDAVITS OF THE PETITIONERS STATING THE AMOUNT OF THE SERVICE FEES CHARGED BY ANY ADOPTION AGENCIES OR ADOPTION FACILITATORS USED BY THE PETITIONERS AND ANY OTHER EXPENSES PAID BY THE PETITIONERS IN THE ADOPTION PROCESS AS OF THE TIME OF FILING THE PETITION; TO AMEND SECTIONS 93-17-12 AND 93-17-13, MISSISSIPPI CODE OF 1972, TO CONFORM TO THE PRECEDING PROVISIONS; TO PROVIDE THAT HOME STUDIES IN INTERNATIONAL ADOPTIONS SHALL BE VALID FOR 18 MONTHS; AND FOR RELATED PURPOSES.

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

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

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

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

(4) (a) Except as otherwise provided in paragraph (b) of this subsection, each license issued under this article expires at midnight (Central Standard Time) twelve (12) months from the date of issuance unless it has been:
   
   (i) Previously revoked by the office; or
   
   (ii) Voluntarily returned to the office by the licensee.

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

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

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

   1. A copy of an audit report and IRS Form 990 for the agency;
   
   2. The agency's fee schedule; and
   
   3. The agency's client list.

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

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

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

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

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

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

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

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

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

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

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

93-17-11. At any time after the filing of the petition for adoption and completion of process thereon, and before the entering of a final decree, the court may, in its discretion, of its own motion or on motion of any party to the proceeding, require an investigation *** and report to the court to be made by any person, officer or home as the court may designate and direct concerning the child, and shall require in adoptions, other than those in which the petitioner or petitioners are a relative or stepparent of the child, that a home study be performed of the petitioner or petitioners by an adoption agency licensed in this state, at the petitioner's or petitioners' sole expense and at no cost to the state or county. The investigation and report shall give the material facts upon which the court may determine whether the child is a proper subject for adoption, whether the petitioner or petitioners are suitable parents for the child, whether the adoption is to its best interest, and any other facts or circumstances that may be material to the proposed adoption. The home study shall be considered by the court in determining whether the petitioner or petitioners are suitable parents for the child. The court, when an investigation and report are required by the court or by this section, shall stay the proceedings in the cause for such reasonable time as may be necessary or required in the opinion of the court for the completion of the investigation and report by the person, officer or home designated and authorized to make the same.

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

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

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

93-17-3. (1) Except as otherwise provided in subsections
(2) and (3), a court of this state has jurisdiction over a
proceeding for the adoption of a minor commenced under this
chapter if:
(a) Immediately before commencement of the proceeding, the minor lived in this state with a parent, a guardian, a prospective adoptive parent or another person acting as parent, for at least six (6) consecutive months, excluding periods of temporary absence, or, in the case of a minor under six (6) months of age, lived in this state from soon after birth with any of those individuals and there is available in this state substantial evidence concerning the minor's present or future care;

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

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

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

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

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

(e) It appears that no other state would have jurisdiction under prerequisites substantially in accordance with paragraphs (a) through (d), or another state has declined to exercise jurisdiction on the ground that this state is the more appropriate forum to hear a petition for adoption of the minor, and it is in the best interest of the minor that a court of this state assume jurisdiction.
(2) A court of this state may not exercise jurisdiction over a proceeding for adoption of a minor if, at the time the petition for adoption is filed, a proceeding concerning the custody or adoption of the minor is pending in a court of another state exercising jurisdiction substantially in conformity with the Uniform Child Custody Jurisdiction Act or this section unless the proceeding is stayed by the court of the other state.

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

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

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

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

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

(4) Any person may be adopted in accordance with the provisions of this chapter in term time or in vacation by an unmarried adult or by a married person whose spouse joins in the petition. The adoption shall be by sworn petition filed in the chancery court of the county in which the adopting petitioner or petitioners reside or in which the child to be adopted resides or was born, or was found when it was abandoned or deserted, or in which the home is located to which the child has been surrendered.
by a person authorized to so do. The petition shall be accompanied by a doctor's or nurse practitioner's certificate showing the physical and mental condition of the child to be adopted and a sworn statement of all property, if any, owned by the child. In addition, the petition shall be accompanied by affidavits of the petitioner or petitioners stating the amount of the service fees charged by any adoption agencies or adoption facilitators used by the petitioner or petitioners and any other expenses paid by the petitioner or petitioners in the adoption process as of the time of filing the petition. If the doctor's or nurse practitioner's certificate indicates any abnormal mental or physical condition or defect, the condition or defect shall not in the discretion of the chancellor bar the adoption of the child if the adopting parent or parents file an affidavit stating full and complete knowledge of the condition or defect and stating a desire to adopt the child, notwithstanding the condition or defect. The court shall have the power to change the name of the child as a part of the adoption proceedings. The word "child" in this section shall be construed to refer to the person to be adopted, though an adult.

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

(6) No person may be adopted before a court ordered home study of the prospective adopting parties is satisfactorily completed if required by Section 93-17-11.

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

93-17-12. In any child custody matter hereafter filed in any chancery or county court in which temporary or permanent custody has already been placed with a parent or guardian and in all adoptions, the court shall impose a fee for any court-ordered home study performed by the Department of Human Services or any other entity. The fee shall be assessed upon either party or upon both parties in the court's discretion. The minimum fee imposed shall
be not less than Three Hundred Fifty Dollars ($350.00) for each household on which a home study is performed. The fee shall be paid directly to the Mississippi Department of Human Services prior to the home study being conducted by the department or to the entity if the study is performed by another entity. The judge may order the fee be paid by one or both of the parents or guardian. If the court determines that both parents or the guardian are unable to pay the fee, the judge shall waive the fee and the cost of the home study shall be defrayed by the Department of Human Services.

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

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

The final decree shall adjudicate, in addition to such other provisions as may be found by the court to be proper for the protection of the interests of the child; and its effect, unless otherwise specifically provided, shall be that (a) the child shall inherit from and through the adopting parents and shall likewise
inherit from the other children of the adopting parents to the same extent and under the same conditions as provided for the inheritance between brothers and sisters of the full blood by the laws of descent and distribution of the State of Mississippi, and that the adopting parents and their other children shall inherit from the child, just as if such child had been born to the adopting parents in lawful wedlock; (b) the child and the adopting parents and adoptive kindred are vested with all of the rights, powers, duties and obligations, respectively, as if such child had been born to the adopting parents in lawful wedlock, including all rights existing by virtue of Section 11-7-13, Mississippi Code of 1972; provided, however, that inheritance by or from the adopted child shall be governed by subsection (a) above; (c) that the name of the child shall be changed if desired; and (d) that the natural parents and natural kindred of the child shall not inherit by or through the child except as to a natural parent who is the spouse of the adopting parent, and all parental rights of the natural parent, or parents, shall be terminated, except as to a natural parent who is the spouse of the adopting parent. Nothing in this chapter shall restrict the right of any person to dispose of property under a last will and testament.

A final decree of adoption shall not be entered until a court-ordered home study is satisfactorily completed, if required in Section 93-17-11.

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

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