

By: Senator(s) Nunnelee

To: Judiciary, Division A

SENATE BILL NO. 2594

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:

13 (a) The parents, or parent, if only one (1) parent,
14 though either be under the age of twenty-one (21) years; * * *

15 (b) In the event both parents are dead, then any two
16 (2) adult kin of the child within the third degree computed
17 according to the civil law, provided that, if one of such kin is
18 in possession of the child, he or she shall join in the petition
19 or be made a party to the suit; or

20 (c) The guardian ad litem of an abandoned child, upon
21 petition showing that the names of the parents of such child are
22 unknown after diligent search and inquiry by the petitioners. In
23 addition to the above, there shall be made parties to any
24 proceeding to adopt a child, either by process or by the filing of
25 a consent to the adoption proposed in the petition, the following:

26 (i) Those persons having physical custody of such
27 child, except persons having such child as foster parents as a

28 result of placement with them by the Department of Human Services
29 of the State of Mississippi.

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

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

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

40 (3) In the case of a child born out of wedlock, the father
41 shall not have a right to object to an adoption unless he has
42 demonstrated, within the period ending three (3) days after the
43 birth of the child, a full commitment to the responsibilities of
44 parenthood. Determination of the rights of the father of a child
45 born out of wedlock may be made in proceedings pursuant to a
46 petition for determination of rights as provided in Section
47 93-17-6.

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

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

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

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

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

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

91 (a) Provided financial support, including, but not
92 limited to, the payment of consistent support to the mother during

93 her pregnancy, contributions to the payment of the medical
94 expenses of pregnancy and birth, and contributions of consistent
95 support of the child after birth; that he frequently and
96 consistently visited the child after birth; and that he is now
97 willing and able to assume legal and physical care of the child;
98 or

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

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

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

112 (7) A petition for determination of rights may be used to
113 determine the rights of alleged fathers whose identity is unknown
114 or uncertain. In such cases the court shall determine what, if
115 any, notice can be and is to be given such persons.

116 Determinations of rights under the procedure of this section may
117 also be made under a petition for adoption.

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

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

124 **SECTION 3.** This act shall take effect and be in force from
125 and after July 1, 2007.