

By: Senator(s) Nunnelee

To: Judiciary, Division A

SENATE BILL NO. 3031

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 AMEND SECTION 93-17-3, MISSISSIPPI CODE OF 1972, TO
5 REQUIRE THAT ADOPTION PETITIONS SHALL BE ACCOMPANIED BY AFFIDAVITS
6 OF THE PETITIONERS STATING THE AMOUNT OF THE SERVICE FEES CHARGED
7 BY ANY ADOPTION AGENCIES OR ADOPTION FACILITATORS USED BY THE
8 PETITIONERS AND ANY OTHER EXPENSES PAID BY THE PETITIONERS IN THE
9 ADOPTION PROCESS AS OF THE TIME OF FILING THE PETITION; TO AMEND
10 SECTION 93-17-11, MISSISSIPPI CODE OF 1972, TO REQUIRE THAT IN
11 ADOPTIONS, OTHER THAN FAMILY ADOPTIONS, THE COURT MAY, IN ITS
12 DISCRETION, REQUIRE THAT A HOME STUDY BE PERFORMED BEFORE A FINAL
13 DECREE IS ENTERED IN THE PROCEEDING, AT THE PETITIONERS' SOLE
14 EXPENSE, TO DETERMINE WHETHER THE PETITIONERS ARE SUITABLE PARENTS
15 FOR THE CHILD; AND FOR RELATED PURPOSES.

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

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

19 43-15-107. (1) Except as provided in Section 43-15-111, no
20 person, agency, firm, corporation, association or other entity,
21 acting individually or jointly with any other person or entity,
22 may establish, conduct or maintain foster homes, residential
23 child-caring agencies and child-placing agencies or facility
24 and/or engage in child placing in this state without a valid and
25 current license issued by and under the authority of the division
26 as provided by this article and the rules of the division. Any
27 out-of-state child-placing agency that provides a full range of
28 services, including, but not limited to, adoptions, foster family
29 homes, adoption counseling services or financial aid in this state
30 must be licensed by the division under this article.

31 (2) No license issued under this article is assignable or
32 transferable.

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

36 (4) (a) Each license issued under this article expires at
37 midnight (Central Standard Time) twelve (12) months from the date
38 of issuance unless it has been:

39 (i) Previously revoked by the office; or

40 (ii) Voluntarily returned to the office by the
41 licensee.

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

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

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

52 43-15-117. (1) Except as provided in this article, no
53 person, agency, firm, corporation, association or group children's
54 home may engage in child placing, or solicit money or other
55 assistance for child placing, without a valid license issued by
56 the division. No out-of-state child-placing agency that provides
57 a full range of services, including, but not limited to,
58 adoptions, foster family homes, adoption counseling services or
59 financial aid may operate in this state without a valid license
60 issued by the division. No child-placing agency shall advertise
61 in the media markets in Mississippi seeking birth mothers or their
62 children for adoption purposes unless the agency holds a valid and
63 current license issued either by the division or the authorized
64 governmental licensing agency of another state that regulates
65 child-placing agencies. Any child-placing agency, physician or

66 attorney who advertises for child placing or adoption services in
67 Mississippi shall be required by the division to show their
68 principal office location on all media advertising for adoption
69 services.

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

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

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

90 (5) The division is specifically authorized to promulgate
91 rules under the Administrative Procedures Law, Title 25, Chapter
92 43, Mississippi Code of 1972, to regulate fees charged by licensed
93 child-placing agencies, if it determines that the practices of
94 those licensed child-placing agencies demonstrates that the fees
95 charged are excessive or that any of the agency's practices are
96 deceptive or misleading; however, those rules regarding fees shall
97 take into account the use of any sliding fee by an agency that
98 uses a sliding fee procedure to permit prospective adoptive

99 parents of varying income levels to utilize the services of those
100 agencies or persons.

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

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

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

118 93-17-3. (1) Except as otherwise provided in subsections
119 (2) and (3), a court of this state has jurisdiction over a
120 proceeding for the adoption of a minor commenced under this
121 chapter if:

122 (a) Immediately before commencement of the proceeding,
123 the minor lived in this state with a parent, a guardian, a
124 prospective adoptive parent or another person acting as parent,
125 for at least six (6) consecutive months, excluding periods of
126 temporary absence, or, in the case of a minor under six (6) months
127 of age, lived in this state from soon after birth with any of
128 those individuals and there is available in this state substantial
129 evidence concerning the minor's present or future care;

130 (b) Immediately before commencement of the proceeding,
131 the prospective adoptive parent lived in this state for at least

132 six (6) consecutive months, excluding periods of temporary
133 absence, and there is available in this state substantial evidence
134 concerning the minor's present or future care;

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

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

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

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

148 (e) It appears that no other state would have
149 jurisdiction under prerequisites substantially in accordance with
150 paragraphs (a) through (d), or another state has declined to
151 exercise jurisdiction on the ground that this state is the more
152 appropriate forum to hear a petition for adoption of the minor,
153 and it is in the best interest of the minor that a court of this
154 state assume jurisdiction.

155 (2) A court of this state may not exercise jurisdiction over
156 a proceeding for adoption of a minor if, at the time the petition
157 for adoption is filed, a proceeding concerning the custody or
158 adoption of the minor is pending in a court of another state
159 exercising jurisdiction substantially in conformity with the
160 Uniform Child Custody Jurisdiction Act or this section unless the
161 proceeding is stayed by the court of the other state.

162 (3) If a court of another state has issued a decree or order
163 concerning the custody of a minor who may be the subject of a
164 proceeding for adoption in this state, a court of this state may

165 not exercise jurisdiction over a proceeding for adoption of the
166 minor unless:

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

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

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

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

180 (4) Any person may be adopted in accordance with the
181 provisions of this chapter in term time or in vacation by an
182 unmarried adult or by a married person whose spouse joins in the
183 petition. The adoption shall be by sworn petition filed in the
184 chancery court of the county in which the adopting petitioner or
185 petitioners reside or in which the child to be adopted resides or
186 was born, or was found when it was abandoned or deserted, or in
187 which the home is located to which the child has been surrendered
188 by a person authorized to so do. The petition shall be
189 accompanied by a doctor's or nurse practitioner's certificate
190 showing the physical and mental condition of the child to be
191 adopted and a sworn statement of all property, if any, owned by
192 the child. In addition, the petition shall be accompanied by
193 affidavits of the petitioner or petitioners stating the amount of
194 the service fees charged by any adoption agencies or adoption
195 facilitators used by the petitioner or petitioners and any other
196 expenses paid by the petitioner or petitioners in the adoption
197 process as of the time of filing the petition. If the doctor's or

198 nurse practitioner's certificate indicates any abnormal mental or
199 physical condition or defect, the condition or defect shall not in
200 the discretion of the chancellor bar the adoption of the child if
201 the adopting parent or parents file an affidavit stating full and
202 complete knowledge of the condition or defect and stating a desire
203 to adopt the child, notwithstanding the condition or defect. The
204 court shall have the power to change the name of the child as a
205 part of the adoption proceedings. The word "child" herein shall
206 be construed to refer to the person to be adopted, though an
207 adult.

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

209 **SECTION 4.** Section 93-17-11, Mississippi Code of 1972, is
210 amended as follows:

211 93-17-11. At any time after the filing of the petition for
212 adoption and completion of process thereon, and before the
213 entering of a final decree, the court may, in its discretion, of
214 its own motion or on motion of any party to the proceeding,
215 require an investigation * * * and report to the court to be made
216 by any person, officer or home as the court may designate and
217 direct concerning the child, and may, in its discretion, require
218 in adoptions, other than those in which the petitioner or
219 petitioners are a relative or stepparent of the child, that a home
220 study be performed of the petitioner or petitioners by an adoption
221 agency licensed in this state or the Department of Human Services,
222 at the petitioner's or petitioners' sole expense and at no cost to
223 the state or county. The investigation and report shall give the
224 material facts upon which the court may determine whether the
225 child is a proper subject for adoption, whether the petitioner or
226 petitioners are suitable parents for the child, whether the
227 adoption is to its best interest, and any other facts or
228 circumstances that may be material to the proposed adoption. The
229 home study shall determine whether the petitioner or petitioners
230 are suitable parents for the child. The court, when an

231 investigation and report are required by the court or by this
232 section, shall stay the proceedings in the cause for such
233 reasonable time as may be necessary or required in the opinion of
234 the court for the completion of the investigation and report by
235 the person, officer or home designated and authorized to make the
236 same.

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

260 After the entry of the interlocutory decree and before entry
261 of the final decree, the court may require such further and
262 additional investigation and reports as it may deem proper. The
263 rights of the parties filing the consent or served with process

264 shall be subject to the decree but shall not be divested until
265 entry of the final decree.

266 **SECTION 5.** This act shall take effect and be in force from
267 and after July 1, 2007.