

By: Representatives Gipson, Barker, Moore,
Formby, Byrd

To: Public Health and Human
Services

HOUSE BILL NO. 561

1 AN ACT TO CREATE THE "MISSISSIPPI HUMAN EMBRYO ADOPTION ACT";
2 TO CODIFY NEW SECTION 93-17-41, MISSISSIPPI CODE OF 1972, WHICH
3 ESTABLISHES THE TITLE OF THE ACT; TO CODIFY NEW SECTION 93-17-43,
4 MISSISSIPPI CODE OF 1972, TO STATE LEGISLATIVE FINDINGS RELATING
5 TO THE TRANSFER OF HUMAN EMBRYOS AND THE PURPOSES OF THE ACT; TO
6 CODIFY NEW SECTION 93-17-45, MISSISSIPPI CODE OF 1972, TO DEFINE
7 CERTAIN TERMS USED IN THE ACT; TO CODIFY NEW SECTION 93-17-47,
8 MISSISSIPPI CODE OF 1972, TO PROVIDE THAT THE TRANSFER OF HUMAN
9 EMBRYOS MUST BE ACCOMPLISHED UNDER THE STATE ADOPTION STATUTES AND
10 TO ESTABLISH CERTAIN CRITERIA SPECIFICALLY FOR THE TRANSFER OF
11 HUMAN EMBRYOS; TO CODIFY NEW SECTION 93-17-2, MISSISSIPPI CODE OF
12 1972, TO PROVIDE THAT THE TERMS "MINOR" AND "CHILD," AS USED IN
13 THE ADOPTION LAWS, INCLUDE A HUMAN EMBRYO; TO AMEND SECTION
14 93-17-3, MISSISSIPPI CODE OF 1972, TO ESTABLISH THE JURISDICTION
15 OF MISSISSIPPI COURTS OVER PROCEEDINGS FOR THE ADOPTION OF A
16 FROZEN HUMAN EMBRYO WHICH IS LOCATED IN A LABORATORY OR FACILITY
17 IN MISSISSIPPI; TO AMEND SECTION 93-17-5, MISSISSIPPI CODE OF
18 1972, TO REQUIRE THE GENETIC PARENTS OF THE FROZEN EMBRYO TO
19 CONSENT TO THE ADOPTION CONTEMPORANEOUSLY WITH RELINQUISHING ALL
20 RIGHTS TO THE EMBRYO; TO AMEND SECTION 93-17-13, MISSISSIPPI CODE
21 OF 1972, TO REQUIRE THE FINAL DECREE IN PROCEEDINGS FOR THE
22 ADOPTION OF A HUMAN EMBRYO TO BE ENTERED BEFORE IMPLANTATION OF
23 THE EMBRYO OCCURS; TO AMEND SECTION 93-17-15, MISSISSIPPI CODE OF
24 1972, TO PROHIBIT ANY ACTION TO SET A SIDE A FINAL DECREE OF
25 ADOPTION OF A HUMAN EMBRYO AFTER THE EMBRYO HAS BEEN IMPLANTED;
26 AND FOR RELATED PURPOSES.

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

28 **SECTION 1.** The following shall be codified as Section
29 93-17-41, Mississippi Code of 1972:

30 93-17-41. Sections 93-17-41 through 93-17-47 of this act
31 shall be known and may be cited as the "Mississippi Human Embryo
32 Adoption Act."

33 **SECTION 2.** The following shall be codified as Section
34 93-17-43, Mississippi Code of 1972:

35 93-17-43. (1) The Legislature finds that:

36 (a) There are upwards of Four Hundred Thousand
37 (400,000) cryopreserved (frozen) human embryos in laboratories and



38 facilities in the United States, and that number is growing
39 annually;

40 (b) There is scant guidance from federal or state law
41 for the disposition of frozen embryos given that few states have
42 legislation governing the disposition of frozen embryos;

43 (c) The lack of clear guidance in federal or state law
44 has resulted in numerous bitterly contested lawsuits stemming from
45 disputes over the status of and rights to frozen embryos,
46 including cases decided by the highest courts of Massachusetts,
47 New Jersey, New York, Tennessee and Washington;

48 (d) Embryo transfer is a haphazard process, with little
49 consistency between in vitro fertilization (IVF) clinics and the
50 lack of dispositional agreements, and the process provides
51 insufficient protection for the best interests of the child and
52 insufficient certainty for the rights and responsibilities of
53 genetic and adoptive parents;

54 (e) The number of embryo transfers completed each year
55 is unknown, and nearly all occur without the oversight of
56 established adoption laws and procedures;

57 (f) It is doubtful that embryo adoption will lead to
58 the production of more stored embryos because of the medical
59 burden and financial expense of conceiving embryos;

60 (g) Despite growing use of the term "embryo adoption,"
61 the term, in the absence of legal changes, may create a false
62 sense of security for donors who believe that they have legally
63 terminated their parental rights and responsibilities when they
64 transfer an embryo to adoptive parents;

65 (h) Bringing embryo transfer within the auspices of
66 adoption procedures will create greater protection for the child,
67 greater certainty for the termination of rights of the genetic
68 parents and greater certainty for the parental rights of the
69 adopting parents; and



70 (i) Since assisted reproductive technologies (ART)
71 create the possibility that a child might have no parents or more
72 than two (2) parents (with sperm donors, egg donors, gestational
73 surrogates and commissioning couples), applying adoption
74 procedures to embryo donation will help to ensure that a child
75 does not have more than two (2) legally recognized parents at a
76 time.

77 (2) The following are the purposes of Sections 93-17-41
78 through 93-17-47:

79 (a) To clarify the rights of genetic and adoptive
80 parents;

81 (b) To apply established procedures in adoption law to
82 embryo adoption;

83 (c) To clarify the legal status of children placed for
84 adoption as embryos; and

85 (d) To promote the best interests of the child.

86 **SECTION 3.** The following shall be codified as Section
87 93-17-45, Mississippi Code of 1972:

88 93-17-45. As used in Sections 93-17-41 through 93-17-47, the
89 following words and phrases have the meanings ascribed in this
90 section unless the context clearly indicates otherwise:

91 (a) "Human embryo" or "embryo" means an individual
92 genetically complete organism (fertilized ovum) of the species
93 homo sapiens, from the single cell stage to eight (8) weeks
94 development.

95 (b) "Embryo transfer" means the relinquishment of
96 rights and responsibilities by the genetic parent or parents of a
97 human embryo and the acceptance of those rights and
98 responsibilities by an adopting parent or parents.

99 **SECTION 4.** The following shall be codified as Section
100 93-17-47, Mississippi Code of 1972:

101 93-17-47. (1) A proceeding for the transfer of a human
102 embryo from genetic to adoptive parents in the State of



103 Mississippi must be conducted pursuant to this section and the
104 provisions governing adoption proceedings set forth in this
105 chapter.

106 (2) A petition for the transfer of a human embryo must be
107 accompanied by a sworn statement from the genetic mother and
108 father, unless the embryo was derived from donor gametes, in which
109 all rights to the embryo are surrendered. The written surrender
110 of rights to the embryo shall cancel any prior written agreement
111 governing the future disposition of the embryo.

112 (3) The relinquishment of rights by the genetic mother and
113 father, unless the embryo was derived from donor gametes, must
114 take place before implantation of the embryo being transferred
115 occurs.

116 **SECTION 5.** The following shall be codified as Section
117 93-17-2, Mississippi Code of 1972:

118 93-17-2. As used in this chapter, the terms "minor," "child"
119 and "minor child" include a human embryo.

120 **SECTION 6.** Section 93-17-3, Mississippi Code of 1972, is
121 amended as follows:

122 93-17-3. (1) Except as otherwise provided in subsections
123 (2) and (3), a court of this state has jurisdiction over a
124 proceeding for the adoption of a minor commenced under this
125 chapter if:

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

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



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

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

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

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

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

152 (e) The subject of the adoption is a frozen human
153 embryo in a laboratory or other facility in this state; or

154 (f) It appears that no other state would have
155 jurisdiction under prerequisites substantially in accordance with
156 paragraphs (a) through (e), or another state has declined to
157 exercise jurisdiction on the ground that this state is the more
158 appropriate forum to hear a petition for adoption of the minor,
159 and it is in the best interest of the minor that a court of this
160 state assume jurisdiction.

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



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

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

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

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

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

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



201 facilitators used by the petitioner or petitioners and any other
202 expenses paid by the petitioner or petitioners in the adoption
203 process as of the time of filing the petition. If the doctor's or
204 nurse practitioner's certificate indicates any abnormal mental or
205 physical condition or defect, the condition or defect shall not,
206 in the discretion of the chancellor, bar the adoption of the child
207 if the adopting parent or parents file an affidavit stating full
208 and complete knowledge of the condition or defect and stating a
209 desire to adopt the child, notwithstanding the condition or
210 defect. The court shall have the power to change the name of the
211 child as a part of the adoption proceedings. The word "child" in
212 this section shall be construed to refer to any person to be
213 adopted, including an adult or a human embryo being transferred
214 from genetic to adoptive parents.

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

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

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

221 93-17-5. (1) Except as otherwise provided in this section,
222 there shall be made parties to the proceeding by process or by the
223 filing therein of a consent to the adoption proposed in the
224 petition, which consent shall be duly sworn to or acknowledged and
225 executed only by the following persons, but not before seventy-two
226 (72) hours after the birth of the child:

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

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



234 (c) The guardian ad litem of an abandoned child, upon
235 petition showing that the names of the parents of such child are
236 unknown after diligent search and inquiry by the petitioners.

237 In addition to the above, there shall be made parties to any
238 proceeding to adopt a child, either by process or by the filing of
239 a consent to the adoption proposed in the petition, the following:

240 (i) Those persons having physical custody of such
241 child, except persons having such child as foster parents as a
242 result of placement with them by the Department of Human Services
243 of the State of Mississippi.

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

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

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

254 (3) In the case of a child born out of wedlock, the father
255 shall not have a right to object to an adoption unless he has
256 demonstrated, within the period ending thirty (30) days after the
257 birth of the child, a full commitment to the responsibilities of
258 parenthood. Determination of the rights of the father of a child
259 born out of wedlock may be made in proceedings pursuant to a
260 petition for determination of rights as provided in Section
261 93-17-6.

262 (4) If such consent is not filed, then process shall be had
263 upon the parties as provided by law for process in person or by
264 publication, if they are nonresidents of the state or are not
265 found therein, after diligent search and inquiry, or are unknown
266 after diligent search and inquiry; however, the court or



267 chancellor in vacation may fix a date in termtime or in vacation
268 to which process may be returnable and shall have power to proceed
269 in termtime or vacation. In any event, if the child is more than
270 fourteen (14) years of age, a consent to the adoption, sworn to or
271 acknowledged by the child, shall also be required or personal
272 service of process shall be had upon the child in the same manner
273 and in the same effect as if it were an adult.

274 (5) Whenever the adoption proceeding involves the transfer
275 of a frozen human embryo, consent to the adoption by the genetic
276 mother and father, unless the embryo was derived from donor
277 gametes, must be given contemporaneously with the statement
278 relinquishing all rights by the genetic parent or parents which is
279 required to accompany the petition under Section 93-17-47.

280 **SECTION 8.** Section 93-17-13, Mississippi Code of 1972, is
281 amended as follows:

282 93-17-13. A final decree of adoption shall not be entered
283 before the expiration of six (6) months from the entry of the
284 interlocutory decree except: (a) when a child is a stepchild of a
285 petitioner or is related by blood to the petitioner within the
286 third degree according to the rules of the civil law or in any
287 case in which the chancellor, in the exercise of his discretion,
288 shall determine from all the proceedings and evidence in the cause
289 that the six-month waiting period is not necessary or required for
290 the benefit of the court, the petitioners or the child to be
291 adopted, and shall so adjudicate in the decree entered in the
292 cause, in either of which cases the final decree may be entered
293 immediately without any delay and without an interlocutory decree;
294 (b) when the child has resided in the home of any petitioner prior
295 to the granting of the interlocutory decree, in which case the
296 court may, in its discretion, shorten the waiting period by the
297 length of time the child has thus resided; or (c) when the
298 proceeding involves the adoption of a human embryo, in which case
299 the final decree may be entered immediately without delay and



300 without an interlocutory decree. In no event may the final decree
301 in a proceeding for the adoption of a human embryo be entered
302 after implantation of the embryo has occurred.

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

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



332 **SECTION 9.** Section 93-17-15, Mississippi Code of 1972, is
333 amended as follows:

334 93-17-15. No action shall be brought to set aside any final
335 decree of adoption, whether granted upon consent or personal
336 process or on process by publication, except within six (6) months
337 of the entry thereof; however, if the final decree of adoption is
338 for the transfer of a human embryo, no action may be brought to
339 set aside the decree after implantation of the embryo has
340 occurred.

341 **SECTION 10.** This act shall take effect and be in force from
342 and after July 1, 2009.

