

By: Representatives Aldridge, Holland

To: Judiciary A

HOUSE BILL NO. 1268

1 AN ACT TO AMEND SECTION 93-17-3, MISSISSIPPI CODE OF 1972, TO
 2 REQUIRE A HOME STUDY BEFORE A PERSON MAY BE PLACED IN THE HOME OF
 3 PROSPECTIVE ADOPTING PARTIES; TO REQUIRE COMPLIANCE WITH THE
 4 INTERSTATE COMPACT FOR PLACEMENT OF CHILDREN AND THE INDIAN CHILD
 5 WELFARE ACT; TO AMEND SECTION 93-17-6, MISSISSIPPI CODE OF 1972,
 6 TO CLARIFY PETITION REQUIREMENTS; TO CREATE SECTION 93-17-18,
 7 MISSISSIPPI CODE OF 1972, TO REQUIRE TRAINING FOR ATTORNEYS
 8 INVOLVED IN ADOPTIONS; TO AMEND SECTION 93-17-19, MISSISSIPPI CODE
 9 OF 1972, TO REQUIRE DISCLOSURE OF PAYMENT OF COSTS; TO AMEND
 10 SECTION 93-17-205, MISSISSIPPI CODE OF 1972, TO REVISE ADOPTION
 11 RECORDS REQUIREMENTS; AND FOR RELATED PURPOSES.

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

13 **SECTION 1.** Section 93-17-3, Mississippi Code of 1972, is
 14 amended as follows:

15 93-17-3. (1) Except as otherwise provided in subsections
 16 (2) and (3), a court of this state has jurisdiction over a
 17 proceeding for the adoption of a minor commenced under this
 18 chapter if:

19 (a) Immediately before commencement of the proceeding,
 20 the minor lived in this state with a parent, a guardian, a
 21 prospective adoptive parent or another person acting as parent,
 22 for at least six (6) consecutive months, excluding periods of
 23 temporary absence, or, in the case of a minor under six (6) months
 24 of age, lived in this state from soon after birth with any of
 25 those individuals and there is available in this state substantial
 26 evidence concerning the minor's present or future care;

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



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

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

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

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

45 (e) It appears that no other state would have
46 jurisdiction under prerequisites substantially in accordance with
47 paragraphs (a) through (d), or another state has declined to
48 exercise jurisdiction on the ground that this state is the more
49 appropriate forum to hear a petition for adoption of the minor,
50 and it is in the best interest of the minor that a court of this
51 state assume jurisdiction.

52 (2) A court of this state may not exercise jurisdiction over
53 a proceeding for adoption of a minor if, at the time the petition
54 for adoption is filed, a proceeding concerning the custody or
55 adoption of the minor is pending in a court of another state
56 exercising jurisdiction substantially in conformity with the
57 Uniform Child Custody Jurisdiction Act or this section unless the
58 proceeding is stayed by the court of the other state.

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



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

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

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

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

77 (4) Any person may be adopted in accordance with the
78 provisions of this chapter in termtime or in vacation by an
79 unmarried adult or by a married person whose spouse joins in the
80 petition. The adoption shall be by sworn petition filed in the
81 chancery court of the county in which the adopting petitioner or
82 petitioners reside or in which the child to be adopted resides or
83 was born, or was found when it was abandoned or deserted, or in
84 which the home is located to which the child has been surrendered
85 by a person authorized to so do. The petition shall be
86 accompanied by a doctor's or nurse practitioner's certificate
87 showing the physical and mental condition of the child to be
88 adopted and a sworn statement of all property, if any, owned by
89 the child. In addition, the petition shall be accompanied by
90 affidavits of the petitioner or petitioners stating the amount of
91 the service fees charged by any adoption agencies or adoption
92 facilitators used by the petitioner or petitioners and any other
93 expenses paid by the petitioner or petitioners in the adoption
94 process as of the time of filing the petition. If the doctor's or
95 nurse practitioner's certificate indicates any abnormal mental or
96 physical condition or defect, the condition or defect shall not,



97 in the discretion of the chancellor, bar the adoption of the child
98 if the adopting parent or parents file an affidavit stating full
99 and complete knowledge of the condition or defect and stating a
100 desire to adopt the child, notwithstanding the condition or
101 defect. The court shall have the power to change the name of the
102 child as a part of the adoption proceedings. The word "child" in
103 this section shall be construed to refer to the person to be
104 adopted, though an adult.

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

106 (6) No person may be placed in the home of or adopted by the
107 prospective adopting parties before a court ordered or voluntary
108 home study is satisfactorily completed by a licensed adoption
109 agency or by the Department of Human Services on the prospective
110 adoptive parties if required by Section 93-17-11.

111 (7) No person may be adopted by a person or persons who
112 reside outside the State of Mississippi unless the provisions of
113 the Interstate Compact for Placement of Children (Section 43-18-1
114 et seq.) have been complied with. In such cases Forms 100A, 100B
115 (if applicable) and evidence of Interstate Compact for Placement
116 of Children approval shall be added to the permanent adoption
117 record file within one (1) month of the placement, and a minimum
118 of three (3) post-placement reports conducted by a licensed child
119 placing agency shall be provided to the Mississippi Department of
120 Human Services Interstate Compact for Placement of Children
121 office.

122 (8) No person may be adopted unless the provisions of the
123 Indian Child Welfare Act (ICWA) have been complied with, if
124 applicable. When applicable, proof of compliance shall be
125 included in the court adoption file prior to finalization of the
126 adoption. If not applicable, a written statement shall be
127 included in the adoption file stating that the provisions of ICWA
128 do not apply prior to finalization.



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

131 93-17-6. (1) Any person who would be a necessary party to
132 an adoption proceeding under this chapter and any person alleged
133 or claiming to be the father of a child born out of wedlock who is
134 proposed for adoption or who has been determined to be such by any
135 administrative or judicial procedure (the "alleged father") may
136 file a petition for determination of rights as a preliminary
137 pleading to a petition for adoption in any court which would have
138 jurisdiction and venue of an adoption proceeding. A petition for
139 determination of rights may be filed at any time after the period
140 ending thirty (30) days after the birth of the child. Should
141 competing petitions be filed in two (2) or more courts having
142 jurisdiction and venue, the court in which the first such petition
143 was properly filed shall have jurisdiction over the whole
144 proceeding until its disposition. The prospective adopting
145 parents need not be a party to such petition. Where the child's
146 biological mother has surrendered the child to a home for
147 adoption, the home may represent the biological mother and her
148 interests in this proceeding.

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

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

156 (4) Proof of an alleged father's full commitment to the
157 responsibilities of parenthood would be shown by proof that, prior
158 to the signing of a surrender of parental rights by the child's
159 natural mother, he filed a paternity action pursuant to the
160 Mississippi Uniform Law on Paternity, and that he either:



161 (a) Provided financial support, including, but not
162 limited to, the payment of consistent support to the mother during
163 her pregnancy, contributions to the payment of the medical
164 expenses of pregnancy and birth, and contributions of consistent
165 support of the child after birth; that he frequently and
166 consistently visited the child after birth; and that he is now
167 willing and able to assume legal and physical care of the child;
168 or

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

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

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

182 (7) A petition for determination of rights may be used to
183 determine the rights of alleged fathers whose identity is unknown
184 or uncertain. In such cases the court shall determine what, if
185 any, notice can be and is to be given such persons.
186 Determinations of rights under the procedure of this section may
187 also be made under a petition for adoption.

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

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



194 **SECTION 3.** The following shall be codified as Section
195 93-17-18, Mississippi Code of 1972:

196 93-17-18. From and after January 1, 2012, in order to
197 represent potential adoptive parents or an adoption agency in an
198 adoption proceeding, attorneys must first have received adoption
199 training provided by or approved by the Mississippi Judicial
200 College within two (2) years immediately preceding the beginning
201 of such representation. The Mississippi Judicial College shall
202 determine the amount of training which shall be satisfactory to
203 fulfill the requirements of this section. The Administrative
204 Office of Courts shall maintain a roll of all attorneys eligible
205 to provide such representation in adoption cases and shall enforce
206 the provisions of this section. The training shall include, but
207 shall not be limited to, the Indian Child Welfare Act and the
208 Interstate Compact for the Placement of Children.

209 **SECTION 4.** Section 93-17-19, Mississippi Code of 1972, is
210 amended as follows:

211 93-17-19. All costs of the proceeding shall be taxed in the
212 manner that the court may direct, including a reasonable fee as
213 determined, approved, and allowed by the court to be paid for each
214 investigation that may be authorized or required by the
215 chancellor, other than for an investigation and report by a public
216 authority or agency, in which event no such fee shall be allowed.

217 All costs paid to any agency, attorney or any other party
218 related to the adoption of a person, shall be disclosed in
219 writing, and documented in the adoption file, prior to filing the
220 adoption.

221 **SECTION 5.** Section 93-17-205, Mississippi Code of 1972, is
222 amended as follows:

223 93-17-205. (1) The bureau shall maintain a centralized
224 adoption records file for all adoptions performed in this state
225 after July 1, 2005. All private agencies, attorneys, and other
226 parties authorized/licensed to provide adoption services shall



227 maintain adoption files permanently, and file a written plan with
228 the bureau detailing the plan. All adoption records files shall
229 include the following information:

230 (a) The medical and social history of the birth
231 parents, including information regarding genetically inheritable
232 diseases or illnesses and any similar information furnished by the
233 birth parents about the adoptee's grandparents, aunts, uncles,
234 brothers and sisters;

235 (b) A report of any medical examination which either
236 birth parent had within one (1) year before the date of the
237 petition for adoption, if available;

238 (c) A report describing the adoptee's prenatal care and
239 medical condition at birth, if available; * * *

240 (d) The medical and social history of the adoptee,
241 including information regarding genetically inheritable diseases
242 or illnesses, and any other relevant medical, social and genetic
243 information;

244 (e) Adopting parties' commitment to comply with
245 post-placement/post-adoption requirements outlined by their state
246 of residence, and copies of post-placement or post-adoption
247 reports; and

248 (f) Forms 100A, 100B (if applicable) and evidence of
249 Interstate Compact for Placement of Children approval (if
250 applicable).

251 The Administrative Office of Courts shall assist the bureau
252 in the maintenance of its centralized adoption record by compiling
253 the number of finalized adoptions in each chancery court district
254 on a monthly basis, and submitting this information to the bureau.
255 The bureau shall include these statistics in its centralized
256 adoption record. The information in this report shall include the
257 number of adoptions in this state where the adopting parent is a
258 blood relative of the adoptee and the number of adoptions in this
259 state where the adopting parent is not a blood relative of the



260 adoptee. The report shall not include any individual identifying
261 information. This information shall be updated annually and made
262 available to the public upon request for a reasonable fee.

263 (2) Any birth parent may file with the bureau at any time
264 any relevant supplemental nonidentifying information about the
265 adoptee or the adoptee's birth parents, and the bureau shall
266 maintain this information in the centralized adoption records
267 file.

268 (3) The bureau shall also maintain as part of the
269 centralized adoption records file the following:

270 (a) The name, date of birth, social security number
271 (both original and revised, where applicable) and birth
272 certificate (both original and revised) of the adoptee;

273 (b) The names, current addresses and social security
274 numbers of the adoptee's birth parents, guardian and legal
275 custodian;

276 (c) Any other available information about the birth
277 parent's identity and location.

278 (4) Any birth parent may file with the bureau at any time an
279 affidavit authorizing the bureau to provide the adoptee with his
280 or her original birth certificate and with any other available
281 information about the birth parent's identity and location, or an
282 affidavit expressly prohibiting the bureau from providing the
283 adoptee with any information about such birth parent's identity
284 and location, and prohibiting any licensed adoption agency from
285 conducting a search for such birth parent under the terms of
286 Sections 93-17-201 through 93-17-223. An affidavit filed under
287 this section may be revoked at any time by written notification to
288 the bureau from the birth parent.

289 (5) Counsel for the adoptive parents in the adoption
290 finalization proceeding shall provide the bureau with the
291 information required in subsections (1) and (3) of this section,
292 and he shall also make such information a part of the adoption



293 records of the court in which the final decree of adoption is
294 rendered. This information shall be provided on forms prepared by
295 the bureau.

296 (6) (a) If an agency receives a report from a physician
297 stating that a birth parent or another child of the birth parent
298 has acquired or may have a genetically transferable disease or
299 illness, the agency shall notify the bureau and the appropriate
300 licensed adoption agency, and the latter agency shall notify the
301 adoptee of the existence of the disease or illness, if he or she
302 is twenty-one (21) years of age or over, or notify the adoptee's
303 guardian, custodian or adoptive parent if the adoptee is under age
304 twenty-one (21).

305 (b) If an agency receives a report from a physician
306 that an adoptee has acquired or may have a genetically
307 transferable disease or illness, the agency shall notify the
308 bureau and the appropriate licensed agency, and the latter agency
309 shall notify the adoptee's birth parent of the existence of the
310 disease or illness.

311 (7) Compliance with the provisions of this section may be
312 waived by the court, in its discretion, in any chancery court
313 proceeding in which one or more of the petitioners for adoption is
314 the natural mother or father of the adoptee.

315 **SECTION 6.** This act shall take effect and be in force from
316 and after July 1, 2012.

