

By: Representatives Aldridge, Holland, Dixon To: Judiciary A

HOUSE BILL NO. 1268
(As Passed the House)

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 AMEND SECTION 93-17-205,
7 MISSISSIPPI CODE OF 1972, TO REVISE ADOPTION RECORDS REQUIREMENTS;
8 TO AUTHORIZE THE FILING OF A PETITION WITH THE SECRETARY OF STATE
9 ALONG WITH PAYMENT OF A FEE; AND FOR RELATED PURPOSES.

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

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

13 93-17-3. (1) Except as otherwise provided in subsections
14 (2) and (3), a court of this state has jurisdiction over a
15 proceeding for the adoption of a minor commenced under this
16 chapter if:

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

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



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

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

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

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

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

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

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



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

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

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

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

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



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

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

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

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

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



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

130 93-17-6. (1) Any person who would be a necessary party to
131 an adoption proceeding under this chapter and any person alleged
132 or claiming to be the father of a child born out of wedlock who is
133 proposed for adoption or who has been determined to be such by any
134 administrative or judicial procedure (the "alleged father") may
135 file a petition for determination of rights as a preliminary
136 pleading to a petition for adoption in any court which would have
137 jurisdiction and venue of an adoption proceeding. A petition for
138 determination of rights may be filed at any time after the period
139 ending thirty (30) days after the birth of the child. Should
140 competing petitions be filed in two (2) or more courts having
141 jurisdiction and venue, the court in which the first such petition
142 was properly filed shall have jurisdiction over the whole
143 proceeding until its disposition. The prospective adopting
144 parents need not be a party to such petition. Where the child's
145 biological mother has surrendered the child to a home for
146 adoption, the home may represent the biological mother and her
147 interests in this proceeding.

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

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

155 (4) (a) Proof of an alleged father's full knowledge and
156 commitment of paternity will be shown by proof that he * * * was
157 willing to provide such support and to visit the child and that he
158 made reasonable attempts to manifest such a parental commitment,
159 but was thwarted in his efforts by the mother or others, and that



160 he is now willing and able to assume legal and physical care of
161 the child.

162 (b) If the alleged father and mother were not married
163 and where the alleged father appears or contests, then DNA testing
164 shall be performed to provide adequate proof whether the alleged
165 father is the actual father. If the identity of the father is
166 unknown, then public notice shall be made in a newspaper of
167 general circulation where the mother resides by publication at
168 least once a week for twenty-eight (28) days and no action in the
169 matter shall be had for at least ten (10) days from the date of
170 last publication.

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

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

180 (7) A petition for determination of rights may be used to
181 determine the rights of alleged fathers whose identity is unknown
182 or uncertain. In such cases the court shall determine what, if
183 any, notice can be and is to be given such persons. Notice shall,
184 at a minimum, be made in a newspaper of general publication where
185 the mother resides by publication at least once a week for
186 twenty-eight (28) days and no action in the matter shall be had
187 for at least ten (10) days from the date of last publication.

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

190 (8) Petitions for determination of rights shall be
191 considered adoption cases and all subsequent proceedings such as a



192 contested adoption under Section 93-17-8 and the adoption
193 proceeding itself shall be portions of the same file.

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

196 **SECTION 3.** This act shall take effect and be in force from
197 and after July 1, 2012.

