

By: Representative Bain

To: Judiciary B

HOUSE BILL NO. 538

1 AN ACT TO AMEND SECTIONS 93-17-3 AND 93-17-11, MISSISSIPPI
 2 CODE OF 1972, TO AUTHORIZE THE JUDGE TO DETERMINE IF A HOME STUDY
 3 IS NECESSARY IN AN ADOPTION; TO CLARIFY RESIDENCY REQUIREMENTS; TO
 4 AMEND SECTION 93-17-25, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT
 5 PERSONS WHO DISCLOSE INFORMATION RECEIVED DURING CLOSED ADOPTION
 6 HEARINGS OR FROM RECORDS PERTAINING TO ADOPTION PROCEEDINGS ARE
 7 GUILTY OF A MISDEMEANOR, SUBJECT TO BEING FINED OR IMPRISONED, AND
 8 MAY BE HELD IN CONTEMPT OF COURT; AND FOR RELATED PURPOSES.

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

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

12 93-17-3. (1) Except as otherwise provided in this section,
 13 a court of this state has jurisdiction over a proceeding for the
 14 adoption or readoption of a minor commenced under this chapter if:

15 (a) Immediately before commencement of the proceeding,
 16 the minor lived in this state with a parent, a guardian, a
 17 prospective adoptive parent or another person acting as parent,
 18 for at least six (6) consecutive months, excluding periods of
 19 temporary absence, or, in the case of a minor under six (6) months
 20 of age, lived in this state from soon after birth with any of



21 those individuals and there is available in this state substantial
22 evidence concerning the minor's present or future care;

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

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

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

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

36 (d) The minor and the prospective adoptive parent or
37 parents are physically present in this state and the minor has
38 been abandoned or it is necessary in an emergency to protect the
39 minor because the minor has been subjected to or threatened with
40 mistreatment or abuse or is otherwise neglected, and the
41 prospective adoptive parent or parents, if not residing in
42 Mississippi, have completed and provided the court with a
43 satisfactory Interstate Compact for Placement of Children (ICPC)
44 home study and accompanying forms;



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; or

52 (f) The child has been adopted in a foreign country,
53 the agency that placed the minor for adoption is licensed in this
54 state, and it is in the best interest of the child to be readopted
55 in a court of this state having jurisdiction.

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

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

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



70 (i) Does not have continuing jurisdiction to
71 modify the decree or order under jurisdictional prerequisites
72 substantially in accordance with the Uniform Child Custody
73 Jurisdiction Act or has declined to assume jurisdiction to modify
74 the decree or order; or

75 (ii) Does not have jurisdiction over a proceeding
76 for adoption substantially in conformity with subsection (1) (a)
77 through (d) or has declined to assume jurisdiction over a
78 proceeding for adoption; and

79 (b) The court of this state has jurisdiction over the
80 proceeding.

81 (4) Any person may be adopted in accordance with the
82 provisions of this chapter in term time or in vacation by an
83 unmarried adult, by a married person whose spouse joins in the
84 petition, by a married person whose spouse does not join in the
85 petition because such spouse does not cohabit or reside with the
86 petitioning spouse, and in any circumstances determined by the
87 court that the adoption is in the best interest of the child.
88 Only the consenting adult will be a legal parent of the child.
89 The adoption shall be by sworn petition filed in the chancery
90 court of the county in which the adopting petitioner or
91 petitioners reside or in which the child to be adopted resides or
92 was born, or was found when it was abandoned or deserted, or in
93 which the home is located to which the child has been surrendered
94 by a person authorized to so do. The petition shall be



95 accompanied by a doctor's or nurse practitioner's certificate
96 showing the physical and mental condition of the child to be
97 adopted and a sworn statement of all property, if any, owned by
98 the child. In addition, the petition shall be accompanied by
99 affidavits of the petitioner or petitioners stating the amount of
100 the service fees charged by any adoption agencies or adoption
101 facilitators used by the petitioner or petitioners and any other
102 expenses paid by the petitioner or petitioners in the adoption
103 process as of the time of filing the petition. If the doctor's or
104 nurse practitioner's certificate indicates any abnormal mental or
105 physical condition or defect, the condition or defect shall not,
106 in the discretion of the chancellor, bar the adoption of the child
107 if the adopting parent or parents file an affidavit stating full
108 and complete knowledge of the condition or defect and stating a
109 desire to adopt the child, notwithstanding the condition or
110 defect. The court shall have the power to change the name of the
111 child as a part of the adoption proceedings. The word "child" in
112 this section shall be construed to refer to the person to be
113 adopted, though an adult.

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

115 (6) No person may be placed in the home of or adopted by the
116 prospective adopting parties before a court-ordered or voluntary
117 home study is satisfactorily completed by a licensed adoption
118 agency, a licensed, experienced social worker approved by the
119 chancery court, a court-appointed guardian ad litem that has



120 knowledge or training in conducting home studies if so directed by
121 the court, or by the Department of Human Services on the
122 prospective adoptive parties if required by Section 93-17-11,
123 unless the court determines that the home study is not necessary.

124 (7) No person may be adopted by a person or persons who
125 reside outside the State of Mississippi unless the provisions of
126 the Interstate Compact for Placement of Children (Section 43-18-1
127 et seq.) have been complied with. In such cases Forms 100A, 100B
128 (if applicable) and evidence of Interstate Compact for Placement
129 of Children approval shall be added to the permanent adoption
130 record file within one (1) month of the placement, and a minimum
131 of two (2) post-placement reports conducted by a licensed
132 child-placing agency shall be provided to the Mississippi
133 Department of Child Protection Services Interstate Compact for
134 Placement of Children office.

135 (8) No person may be adopted unless the provisions of the
136 Indian Child Welfare Act (ICWA) have been complied with, if
137 applicable. When applicable, proof of compliance shall be
138 included in the court adoption file prior to finalization of the
139 adoption. If not applicable, a written statement or paragraph in
140 the petition for adoption shall be included in the adoption
141 petition stating that the provisions of ICWA do not apply before
142 finalization.

143 (9) The readoption of a child who has automatically acquired
144 United States citizenship following an adoption in a foreign



145 country and who possesses a Certificate of Citizenship in
146 accordance with the Child Citizenship Act, CAA, Public Law
147 106-395, may be given full force and effect in a readoption
148 proceeding conducted by a court of competent jurisdiction in this
149 state by compliance with the Mississippi Registration of Foreign
150 Adoptions Act, Article 9 of this chapter.

151 **SECTION 2.** Section 93-17-11, Mississippi Code of 1972, is
152 amended as follows:

153 93-17-11. At any time after the filing of the petition for
154 adoption and completion of process thereon, and before the
155 entering of a final decree, the court may, in its discretion, of
156 its own motion or on motion of any party to the proceeding,
157 require an investigation and report to the court to be made by any
158 person, officer or home as the court may designate and direct
159 concerning the child, and shall require in adoptions, unless the
160 court determines that such should not be required in adoptions,
161 other than those in which the petitioner or petitioners are a
162 relative or stepparent of the child, that a home study be
163 performed of the petitioner or petitioners by a licensed adoption
164 agency or by the Department of Human Services, at the petitioner's
165 or petitioners' sole expense and at no cost to the state or
166 county. The investigation and report shall give the material
167 facts upon which the court may determine whether the child is a
168 proper subject for adoption, whether the petitioner or petitioners
169 are suitable parents for the child, whether the adoption is to its



170 best interest, and any other facts or circumstances that may be
171 material to the proposed adoption. The home study shall be
172 considered by the court in determining whether the petitioner or
173 petitioners are suitable parents for the child. The court, when
174 an investigation and report are required by the court or by this
175 section, shall stay the proceedings in the cause for such
176 reasonable time as may be necessary or required in the opinion of
177 the court for the completion of the investigation and report by
178 the person, officer or home designated and authorized to make the
179 same.

180 Upon the filing of that consent or the completion of the
181 process and the filing of the investigation and report, if
182 required by the court or by this section, and the presentation of
183 such other evidence as may be desired by the court, if the court
184 determines that it is to the best interests of the child that an
185 interlocutory decree of adoption be entered, the court may
186 thereupon enter an interlocutory decree upon such terms and
187 conditions as may be determined by the court, in its discretion,
188 but including therein that the complete care, custody and control
189 of the child shall be vested in the petitioner or petitioners
190 until further orders of the court and that during such time the
191 child shall be and remain a ward of the court. If the court
192 determines by decree at any time during the pendency of the
193 proceeding that it is not to the best interests of the child that
194 the adoption proceed, the petitioners shall be entitled to at



195 least five (5) days' notice upon their attorneys of record and a
196 hearing with the right of appeal as provided by law from a
197 dismissal of the petition; however, the bond perfecting the appeal
198 shall be filed within ten (10) days from the entry of the decree
199 of dismissal and the bond shall be in such amount as the
200 chancellor may determine and supersedeas may be granted by the
201 chancellor or as otherwise provided by law for appeal from final
202 decrees.

203 After the entry of the interlocutory decree and before entry
204 of the final decree, the court may require such further and
205 additional investigation and reports as it may deem proper. The
206 rights of the parties filing the consent or served with process
207 shall be subject to the decree but shall not be divested until
208 entry of the final decree.

209 **SECTION 3.** Section 93-17-25, Mississippi Code of 1972, is
210 amended as follows:

211 93-17-25. All proceedings under this chapter shall be
212 confidential and shall be held in closed court without admittance
213 of any person other than the interested parties, except upon order
214 of the court. All pleadings, reports, files, testimony, exhibits
215 and records pertaining to * * * adoption proceedings shall be
216 confidential and shall not be public records and shall be withheld
217 from inspection or examination by any person, and shall not be
218 disclosed by any person except upon order of the court which the
219 proceeding was had on good cause shown.



220 Upon motion of any interested person, the files of adoption
221 proceedings, heretofore had may be placed in the confidential
222 files upon order of the court or chancellor and shall be subject
223 to the provisions of this chapter.

224 Provided, however, that notwithstanding the confidential
225 nature of said proceedings, said record shall be available for use
226 in any court or administrative proceedings under a subpoena duces
227 tecum addressed to the custodian of said records and portions of
228 such record may be released pursuant to Sections 93-17-201 through
229 93-17-223.

230 Any person who shall disclose any information received during
231 a closed hearing or any records involving children or the contents
232 thereof without the proper authorization under this section shall
233 be guilty of a misdemeanor and punished, upon conviction, by a
234 fine of not more than One Thousand Dollars (\$1,000.00), or by
235 imprisonment in the county jail of not more than one (1) year or
236 by both such fine and imprisonment.

237 Nothing herein shall prevent the court from finding in civil
238 contempt any person who shall disclose any records involving
239 children or the contents thereof without the proper authorization
240 under this section. Any person who willfully violates, neglects
241 or refuses to obey, perform or comply herewith shall be in
242 contempt of court and punished by a fine not to exceed Five
243 Hundred Dollars (\$500.00), or by imprisonment in jail not to
244 exceed ninety (90) days, or by both such fine and imprisonment.



245 **SECTION 4.** This act shall take effect and be in force from
246 and after July 1, 2022.

