

By: Representative Barnett

To: Judiciary A

HOUSE BILL NO. 265

1 AN ACT TO AMEND SECTIONS 93-17-5, 93-17-13, 93-17-25,
2 93-17-205, 93-17-207, 93-17-209, 93-17-215, 93-17-217 AND
3 93-17-219, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT AN ADOPTED
4 CHILD WHO IS AGE EIGHTEEN YEARS OR OLDER SHALL HAVE THE RIGHT TO
5 KNOW THE IDENTITY OF THE BIOLOGICAL PARENTS OF SUCH CHILD; TO
6 PROVIDE SUCH INFORMATION TO SIBLINGS, PARENTS, OFFSPRING AND
7 GUARDIANS OR CUSTODIANS; TO REPEAL SECTION 93-17-223, MISSISSIPPI
8 CODE OF 1972, WHICH PROHIBITS ONE PARENT FROM DIVULGING THE
9 IDENTITY OF THE OTHER PARENT TO AN ADOPTEE; AND FOR RELATED
10 PURPOSES.

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

12 **SECTION 1.** Section 93-17-5, Mississippi Code of 1972, is
13 amended as follows:

14 93-17-5. (1) There shall be made parties to the proceeding
15 by process or by the filing therein of a consent to the adoption
16 proposed in the petition, which consent shall be duly sworn to or
17 acknowledged and executed only by the following persons, but not
18 before seventy-two (72) hours after the birth of said child: (a)
19 the parents, or parent, if only one (1) parent, though either be
20 under the age of twenty-one (21) years; or, (b) in the event both
21 parents are dead, then any two (2) adult kin of the child within
22 the third degree computed according to the civil law, provided
23 that, if one of such kin is in possession of the child, he or she
24 shall join in the petition or be made a party to the suit; or, (c)
25 the guardian ad litem of an abandoned child, upon petition showing
26 that the names of the parents of such child are unknown after
27 diligent search and inquiry by the petitioners. In addition to
28 the above, there shall be made parties to any proceeding to adopt
29 a child, either by process or by the filing of a consent to the
30 adoption proposed in the petition, the following:

31 (i) Those persons having physical custody of such
32 child, except persons having such child as foster parents as a
33 result of placement with them by the Department of Human Services
34 of the State of Mississippi.

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

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

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

45 (3) In the case of a child born out of wedlock, the father
46 shall not have a right to object to an adoption unless he has
47 demonstrated, within the period ending thirty (30) days after the
48 birth of the child, a full commitment to the responsibilities of
49 parenthood. Determination of the rights of the father of a child
50 born out of wedlock may be made in proceedings pursuant to a
51 petition for determination of rights as provided in Section
52 93-17-6. If an adopted child aged eighteen (18) years or older
53 wishes to know the identity of the biological father of such
54 child, such information shall be provided to the child.

55 (4) If such consent be not filed, then process shall be had
56 upon the parties as provided by law for process in person or by
57 publication, if they be nonresidents of the state or are not found
58 therein, after diligent search and inquiry, or are unknown after
59 diligent search and inquiry; provided that the court or chancellor
60 in vacation may fix a date in termtime or in vacation to which
61 process may be returnable and shall have power to proceed in
62 termtime or vacation. In any event, if the child is more than
63 fourteen (14) years of age, a consent to the adoption, sworn to or

64 acknowledged by the child, shall also be required or personal
65 service of process shall be had upon the child in the same manner
66 and in the same effect as if it were an adult.

67 **SECTION 2.** Section 93-17-13, Mississippi Code of 1972, is
68 amended as follows:

69 93-17-13. A final decree of adoption shall not be entered
70 before the expiration of six (6) months from the entry of the
71 interlocutory decree except (a) when a child is a stepchild of a
72 petitioner or is related by blood to the petitioner within the
73 third degree according to the rules of the civil law or in any
74 case in which the chancellor in the exercise of his discretion
75 shall determine from all the proceedings and evidence in said
76 cause that the six-month waiting period is not necessary or
77 required for the benefit of the court, the petitioners or the
78 child to be adopted, and shall so adjudicate in the decree entered
79 in said cause, in either of which cases the final decree may be
80 entered immediately without any delay and without an interlocutory
81 decree, or (b) when the child has resided in the home of any
82 petitioner prior to the granting of the interlocutory decree, in
83 which case the court may, in its discretion, shorten the waiting
84 period by the length of time the child has thus resided.

85 The final decree shall adjudicate, in addition to such other
86 provisions as may be found by the court to be proper for the
87 protection of the interests of the child; and its effect, unless
88 otherwise specifically provided, shall be that (a) the child shall
89 inherit from and through the adopting parents and shall likewise
90 inherit from the other children of the adopting parents to the
91 same extent and under the same conditions as provided for the
92 inheritance between brothers and sisters of the full blood by the
93 laws of descent and distribution of the State of Mississippi, and
94 that the adopting parents and their other children shall inherit
95 from the child, just as if such child had been born to the
96 adopting parents in lawful wedlock; (b) the child and the adopting

97 parents and adoptive kindred are vested with all of the rights,
98 powers, duties and obligations, respectively, as if such child had
99 been born to the adopting parents in lawful wedlock, including all
100 rights existing by virtue of Section 11-7-13, Mississippi Code of
101 1972; provided, however, that inheritance by or from the adopted
102 child shall be governed by subsection (a) above; (c) that the name
103 of the child shall be changed if desired; and (d) that the natural
104 parents and natural kindred of the child shall not inherit by or
105 through the child except as to a natural parent who is the spouse
106 of the adopting parent, and all parental rights of the natural
107 parent, or parents, shall be terminated, except as to a natural
108 parent who is the spouse of the adopting parent. Nothing in this
109 chapter shall restrict the right of any person to dispose of
110 property under a last will and testament.

111 An adopted child aged eighteen (18) years of age or older
112 shall have the right to be provided the identity of the biological
113 parents of such child.

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

116 93-17-25. All proceedings under this chapter shall be
117 confidential and shall be held in closed court without admittance
118 of any person other than the interested parties, except upon order
119 of the court. All pleadings, reports, files and records
120 pertaining to adopting proceedings shall be confidential and shall
121 not be public records and shall be withheld from inspection or
122 examination by any person, except upon order of the court in which
123 the proceeding was had on good cause shown.

124 Upon motion of any interested person, the files of adoption
125 proceedings, heretofore had may be placed in the confidential
126 files upon order of the court or chancellor and shall be subject
127 to the provisions of this chapter.

128 Provided, however, that notwithstanding the confidential
129 nature of said proceedings, said record shall be available for use

130 in any court or administrative proceedings under a subpoena duces
131 tecum addressed to the custodian of said records and portions of
132 such record may be released pursuant to Sections 93-17-201 through
133 93-17-223.

134 An adopted child aged eighteen (18) years or older shall have
135 the right to be provided the identity of the biological parents of
136 such child.

137 **SECTION 4.** Section 93-17-205, Mississippi Code of 1972, is
138 amended as follows:

139 93-17-205. (1) The bureau shall maintain a centralized
140 adoption records file for all adoptions performed in this state
141 after the effective date of this chapter which shall include the
142 following information:

143 (a) The medical and social history of the birth
144 parents, including information regarding genetically inheritable
145 diseases or illnesses and any similar information furnished by the
146 birth parents about the adoptee's grandparents, aunts, uncles,
147 brothers and sisters;

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

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

153 (d) The medical and social history of the adoptee,
154 including information regarding genetically inheritable diseases
155 or illnesses, and any other relevant medical, social and genetic
156 information.

157 (2) Any birth parent may file with the bureau at any time
158 any relevant supplemental nonidentifying information about the
159 adoptee or the adoptee's birth parents, and the bureau shall
160 maintain this information in the centralized adoption records
161 file.

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

164 (a) The name, date of birth, social security number
165 (both original and revised, where applicable) and birth
166 certificate (both original and revised) of the adoptee;

167 (b) The names, current addresses and social security
168 numbers of the adoptee's birth parents, guardian and legal
169 custodian;

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

172 (4) Any birth parent shall file with the bureau at any time
173 an affidavit authorizing the bureau to provide the adoptee with
174 his or her original birth certificate and with any other available
175 information about the birth parent's identity * * *.

176 (5) Counsel for the adoptive parents in the adoption
177 finalization proceeding shall provide the bureau with the
178 information required in subsections (1) and (3) of this section,
179 and he shall also make such information a part of the adoption
180 records of the court in which the final decree of adoption is
181 rendered. This information shall be provided on forms prepared by
182 the bureau.

183 (6) (a) If an agency receives a report from a physician
184 stating that a birth parent or another child of the birth parent
185 has acquired or may have a genetically transferable disease or
186 illness, the agency shall notify the bureau and the appropriate
187 licensed adoption agency, and the latter agency shall notify the
188 adoptee of the existence of the disease or illness, if he or she
189 is twenty-one (21) years of age or over, or notify the adoptee's
190 guardian, custodian or adoptive parent if the adoptee is under age
191 twenty-one (21).

192 (b) If an agency receives a report from a physician
193 that an adoptee has acquired or may have a genetically
194 transferable disease or illness, the agency shall notify the

195 bureau and the appropriate licensed agency, and the latter agency
196 shall notify the adoptee's birth parent of the existence of the
197 disease or illness.

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

202 **SECTION 5.** Section 93-17-207, Mississippi Code of 1972, is
203 amended as follows:

204 93-17-207. (1) The bureau or the agency shall release the
205 nonidentifying or identifying information maintained as provided
206 in Section 93-17-205 for a reasonable fee, including the actual
207 cost of reproduction, to any of the following persons upon request
208 made with sufficient proof of identity:

- 209 (a) An adoptee eighteen (18) years of age or older;
210 (b) An adoptive parent;
211 (c) The guardian or legal custodian of an adoptee; or
212 (d) The offspring or blood sibling of an adoptee if the
213 requester is eighteen (18) years of age or older.

214 (2) Information released pursuant to subsection (1) of this
215 section shall * * * include the name and address of the birth
216 parent, the identity of any provider of health care to the adoptee
217 or to the birth parent and any other information which might
218 reasonably lead to the discovery of the identity of either birth
219 parent.

220 **SECTION 6.** Section 93-17-209, Mississippi Code of 1972, is
221 amended as follows:

222 93-17-209. (1) Whenever any person specified under Section
223 93-17-207 wishes to obtain medical, social or genetic background
224 information about an adoptee or nonidentifying information about
225 the birth parents of such adoptee or the adoptee wishes to obtain
226 identifying, medical, social or background information, and the
227 information is not on file with the bureau and the birth parents

228 have not filed affidavits prohibiting a search to be conducted for
229 them under the provisions of Sections 93-17-201 through 93-17-223,
230 the person may request a licensed adoption agency to locate the
231 birth parents to obtain the information.

232 (2) Employees of any agency conducting a search under this
233 section may not inform any person other than the birth parents of
234 the purpose of the search.

235 (3) The agency may charge the requester a reasonable fee for
236 the cost of the search. When the agency determines that the fee
237 will exceed One Hundred Dollars (\$100.00) for either birth parent,
238 it shall notify the requester. No fee in excess of One Hundred
239 Dollars (\$100.00) per birth parent may be charged unless the
240 requester, after receiving notification under this paragraph, has
241 given consent to proceed with the search.

242 (4) The agency conducting the search shall, upon locating a
243 birth parent, notify him or her of the request and of the need for
244 medical, social, genetic or identifying information.

245 (5) The agency shall release to the requester any medical or
246 genetic information provided by a birth parent under this section
247 without disclosing the birth parent's identity or location, unless
248 the requester is the child aged eighteen (18) years or older and
249 in that case identifying information shall be provided.

250 (6) If a birth parent is located but refuses to provide the
251 information requested, the agency shall notify the requester,
252 without disclosing the birth parent's identity or location, and
253 the requester may petition the chancery court to order the birth
254 parent to disclose the nonidentifying information or identifying
255 information if the requester is the child aged eighteen (18) years
256 or older. The court shall grant the motion for good cause shown
257 and if the requester is such child good cause shall be presumed.

258 (7) The Mississippi Department of Human Services shall
259 provide the bureau each year with a list of licensed adoption

260 agencies in this state capable of performing the types of searches
261 described in this section.

262 **SECTION 7.** Section 93-17-215, Mississippi Code of 1972, is
263 amended as follows:

264 93-17-215. Any person * * * who has been adopted in this
265 state may request the bureau through a licensed adoption agency
266 providing post-adoption services to obtain and provide the
267 identifying information regarding either or both of his or her
268 birth parents maintained as provided in Section 93-17-205 * * *.

269 **SECTION 8.** Section 93-17-217, Mississippi Code of 1972, is
270 amended as follows:

271 93-17-217. * * * Before acting on a request made pursuant to
272 Section 93-17-209 or Section 93-17-215, the agency shall require
273 the adoptee to provide adequate identification and to submit to
274 counseling by such agency in connection with the release and use
275 of this information. The bureau shall release the requested
276 information to the designated agency upon request by such agency.

277 **SECTION 9.** Section 93-17-219, Mississippi Code of 1972, is
278 amended as follows:

279 93-17-219. (1) If the bureau does not have on file (a) an
280 affidavit * * * authorizing release of identifying
281 information * * * and any further contact from each known birth
282 parent for whom information is sought, or (b) a notice that such
283 birth parent has been contacted once and has refused to authorize
284 the release of confidential information, then the adoptee may
285 request the agency to undertake a search for the birth parent who
286 has not filed an affidavit or who has not been contacted. The
287 licensed agency shall not inform any person other than the birth
288 parents of the purpose of the search.

289 (2) The licensed agency may charge the adoptee a reasonable
290 fee for the cost of the search. When the agency determines that
291 the fee will exceed One Hundred Dollars (\$100.00) for either birth
292 parent, it shall notify the adoptee. No fee in excess of One

293 Hundred Dollars (\$100.00) per birth parent may be charged unless
294 the adoptee, after receiving notification under this paragraph,
295 has given consent to proceed with the search.

296 (3) Upon locating a birth parent the licensed agency
297 conducting the search shall make at least one (1) verbal contact
298 and notify him or her of the following:

299 (a) The nature of the information requested;

300 (b) The date of the request; and

301 (c) The fact that the birth parent shall consent
302 to * * * the release of this information * * *.

303 (4) Within three (3) working days after contacting a birth
304 parent, the licensed agency shall provide the birth parent with a
305 written statement of the information requested and an affidavit
306 form authorizing * * * the release of the requested
307 information. * * * The licensed agency shall disclose the
308 requested information about that birth parent to the child aged
309 eighteen (18) years or older only.

310 (5) If a licensed agency has contacted a birth parent as
311 provided by this section, and the birth parent does not file the
312 affidavit, the agency shall not disclose the requested information
313 to any person other than the child aged eighteen (18) years or
314 older.

315 (6) If, after a search under this section, a known birth
316 parent cannot be located, the agency shall not disclose the
317 requested identifying information about that birth parent to any
318 person except the child or persons authorized under Section
319 93-17-207, although it may disclose any available nonidentifying
320 information regarding that birth parent, and it may disclose
321 identifying information about the other birth parent if such other
322 birth parent has signed an unrevoked affidavit authorizing such
323 release. If a birth parent is located and refuses to authorize
324 the release of identifying information, the agency locating this

325 birth parent shall notify the bureau. The bureau shall note such
326 contact and refusal in its records.

327 * * *

328 **SECTION 10.** Section 93-17-223, Mississippi Code of 1972,
329 which prohibits one parent from divulging the identity of the
330 other parent to an adoptee, is repealed.

331 **SECTION 11.** This act shall take effect and be in force from
332 and after July 1, 2005.