

By: Representative Ishee

To: Judiciary A

## HOUSE BILL NO. 147

1 AN ACT TO AMEND SECTIONS 93-9-21, 93-9-25 AND 93-9-27,  
2 MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE USE OF CHEEK SWAB  
3 TESTING TO ESTABLISH PATERNITY; AND FOR RELATED PURPOSES.

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

5 SECTION 1. Section 93-9-21, Mississippi Code of 1972, is  
6 amended as follows:

7 93-9-21. (1) Prior to the commencement of a paternity  
8 action, the putative parent may request, whereupon the Department  
9 of Human Services may require, genetic testing of all parties.

10 (2) The court, on its own motion or on motion of the  
11 plaintiff or the defendant, shall order the mother, the alleged  
12 father and the child or children to submit to blood tests, cheek  
13 swab tests and any other tests which reasonably prove or disprove  
14 the probability of paternity.

15 If any party refuses to submit to such tests, the court may  
16 resolve the question of paternity against such party or enforce  
17 its order if the rights of others and the interest of justice so  
18 require.

19 (3) Any party calling a witness or witnesses for the purpose  
20 of testifying that they had sexual intercourse with the mother at  
21 any possible time of conception shall provide all other parties  
22 with the name and address of the witness twenty (20) days before  
23 the trial. If a witness is produced at the hearing for the  
24 purpose stated in this subsection but the party calling the  
25 witness failed to provide the twenty-day notice, the court may  
26 adjourn the proceeding for the purpose of taking a blood, cheek  
27 swab or other test of the witness prior to hearing the testimony

28 of the witness if the court finds that the party calling the  
29 witness acted in good faith.

30 (4) The court shall ensure that all parties are aware of  
31 their right to request blood, cheek swab or other tests under this  
32 section.

33 (5) (a) Genetic tests shall be performed by a laboratory  
34 selected from the approved list as prepared and maintained by the  
35 Department of Human Services.

36 (b) The Department of Human Services, not less often  
37 than annually, shall publicly issue a request for proposals, and  
38 such requests for proposals when issued shall contain terms and  
39 conditions relating to price, technology, and such other matters  
40 as are determined by the department to be appropriate for  
41 inclusion or required by law. After responses to the request for  
42 proposals have been duly received, the department shall select the  
43 lowest and best bid on the basis of price, technology and other  
44 relevant factors and from such proposals, but not limited to the  
45 terms thereof, negotiate and enter into contracts with one or more  
46 of the laboratories submitting proposals. The department shall  
47 prepare a list of all laboratories with which it has contracted on  
48 these terms. The list and any updates thereto shall be  
49 distributed to all chancery clerks. To be eligible to appear on  
50 the list, a laboratory must meet the following requirements:

51 (i) The laboratory is qualified to do business  
52 within the State of Mississippi;

53 (ii) The laboratory can provide test results in  
54 less than fourteen (14) days; and

55 (iii) The laboratory must have participated in the  
56 competitive procurement process.

57 SECTION 2. Section 93-9-25, Mississippi Code of 1972, is  
58 amended as follows:

59 93-9-25. The costs of the blood, cheek swab or other tests  
60 required by the court and the compensation of each expert witness  
61 appointed by the court shall be fixed at a reasonable amount. It  
62 shall be paid as the court shall order. The court may order that  
63 it be paid by the parties in such proportions and at such times as  
64 it shall prescribe, and that, after payment by either of the  
65 parties or both, all or part or none of it be taxed as costs in

66 the action. The fee of an expert witness called by a party but  
67 not appointed by the court shall be paid by the party calling him  
68 but shall not be taxed as costs in the action.

69 SECTION 3. Section 93-9-27, Mississippi Code of 1972, is  
70 amended as follows:

71 93-9-27. (1) If the court finds that the conclusions of all  
72 the experts, as disclosed by the evidence based upon the tests,  
73 are that the alleged father is not the father of the child, the  
74 question of paternity shall be resolved accordingly. If an expert  
75 concludes that the blood, cheek swab or other tests show the  
76 probability of paternity, such evidence shall be admitted.

77 (2) There shall be rebuttable presumption, affecting the  
78 burden of proof, of paternity, if the court finds that the  
79 probability of paternity, as calculated by the experts qualified  
80 as examiners of genetic tests, is ninety-eight percent (98%) or  
81 greater. This presumption may only be rebutted by a preponderance  
82 of the evidence.

83 SECTION 3. This act shall take effect and be in force from  
84 and after July 1, 1999.