

By: Representative Fleming

To: Judiciary A

HOUSE BILL NO. 88

1 AN ACT TO PROVIDE THAT GENETIC INFORMATION IS PERSONAL
2 PROPERTY AND TO REQUIRE INFORMED CONSENT FOR GENETIC TESTING; TO
3 AMEND SECTION 93-9-21, MISSISSIPPI CODE OF 1972, IN CONFORMITY
4 THERETO; AND FOR RELATED PURPOSES.

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

6 **SECTION 1.** Genetic information is hereby defined as personal
7 property and no person shall be required to consent to genetic
8 testing without such person's informed consent.

9 **SECTION 2.** Section 93-9-21, Mississippi Code of 1972, is
10 amended as follows:

11 93-9-21. (1) (a) In all cases brought pursuant to Title
12 IV-D of the Social Security Act, upon sworn documentation by the
13 mother, putative father, or the Department of Human Services
14 alleging paternity, the department may issue an administrative
15 order for paternity testing which requires the mother, putative
16 father and minor child to submit themselves for paternity testing
17 if such mother, putative father or minor child provides informed
18 consent to such testing. The department shall send the putative
19 father a copy of the Administrative Order and a Notice for Genetic
20 Testing which shall include the date, time and place for
21 collection of the putative father's genetic sample. The
22 Department shall also send the putative father a Notice and
23 Complaint to Establish Paternity which shall specify the date and
24 time certain of the court hearing by certified mail, restricted
25 delivery, return receipt requested. Notice shall be deemed
26 complete as of the date of delivery as evidenced by the return
27 receipt. The required notice may also be delivered by personal
28 service upon the putative father in accordance with Rule 4 of the

29 Mississippi Rules of Civil Procedure insofar as service of an
30 administrative order or notice is concerned.

31 (b) If the putative father does not submit to genetic
32 testing, the court shall, without further notice, on the date and
33 time previously set through the notice for hearing, review the
34 documentation of the refusal to submit to genetic testing and make
35 a determination as to whether the complaint to establish paternity
36 should be granted. The refusal to submit to such testing shall
37 create a rebuttable presumption of an admission to paternity by
38 the putative father.

39 (c) In any case in which the Department of Human
40 Services orders genetic testing, the department is required to
41 advance costs of such tests subject to recoupment from the alleged
42 father if paternity is established. If either party challenges
43 the original test results, the department shall order additional
44 testing at the expense of the challenging party.

45 (2) The court, on its own motion or on motion of the
46 plaintiff or the defendant, shall order the mother, the alleged
47 father and the child or children to submit to genetic tests and
48 any other tests which reasonably prove or disprove the probability
49 of paternity, provided that such person provided informed consent
50 to have such testing performed.

51 If any party refuses to submit to such tests, the court may
52 resolve the question of paternity against such party or enforce
53 its order for genetic testing as the rights of others and the
54 interest of justice require.

55 (3) Any party calling a witness or witnesses for the purpose
56 of testifying that they had sexual intercourse with the mother at
57 any possible time of conception of the child whose paternity is in
58 question shall provide all other parties with the name and address
59 of the witness at least twenty (20) days before the trial. If a
60 witness is produced at the hearing for the purpose provided in
61 this subsection but the party calling the witness failed to

62 provide the twenty-day notice, the court may adjourn the
63 proceeding for the purpose of taking a genetic test of the witness
64 before hearing the testimony of the witness if the court finds
65 that the party calling the witness acted in good faith.

66 (4) The court shall ensure that all parties are aware of
67 their right to request genetic tests under this section.

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

71 (b) The Department of Human Services shall publicly
72 issue a request for proposals, and such requests for proposals
73 when issued shall contain terms and conditions relating to price,
74 technology and such other matters as are determined by the
75 department to be appropriate for inclusion or required by law.
76 After responses to the request for proposals have been duly
77 received, the department shall select the lowest and best bid(s)
78 on the basis of price, technology and other relevant factors and
79 from such proposals, but not limited to the terms thereof,
80 negotiate and enter into contract(s) with one or more of the
81 laboratories submitting proposals. The department shall prepare a
82 list of all laboratories with which it has contracted on these
83 terms. The list and any updates thereto shall be distributed to
84 all chancery clerks. To be eligible to appear on the list, a
85 laboratory must meet the following requirements:

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

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

90 (iii) The laboratory must have participated in the
91 competitive procurement process.

92 **SECTION 3.** This act shall take effect and be in force from
93 and after July 1, 2004.