

By: Senator(s) Doty

To: Judiciary, Division A

SENATE BILL NO. 2877
(As Sent to Governor)

1 AN ACT TO AMEND SECTIONS 43-19-33, 93-9-9 AND 93-9-21,
2 MISSISSIPPI CODE OF 1972, TO PROVIDE THAT AN AFFIRMATION OF
3 PATERNITY OF A DEPENDENT CHILD CAN BE ESTABLISHED BY DECLARATION
4 WITH A COURT OF COMPETENT JURISDICTION; AND FOR RELATED PURPOSES.

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

6 **SECTION 1.** Section 43-19-33, Mississippi Code of 1972, is
7 amended as follows:

8 43-19-33. (1) In lieu of legal proceedings instituted to
9 obtain support for a dependent child from the responsible parent,
10 a written stipulated agreement to support said child by periodic
11 payments executed by the responsible parent when acknowledged
12 before a clerk of the court having jurisdiction over such matters
13 or a notary public and filed with and approved by the judge
14 of * * * the court having jurisdiction over such matters shall
15 have the same force and effect, retroactively and prospectively,
16 in accordance with the terms of said agreement as an order of
17 support entered by the court, and shall be enforceable and subject
18 to modification in the same manner as is provided by law for
19 orders of the court in such cases.



20 (2) In lieu of legal proceedings instituted to establish
21 paternity, a written admission of paternity containing a
22 stipulated agreement of support executed by the putative father of
23 the dependent child, when accompanied by a written * * *
24 declaration in support of establishing paternity * * * provided
25 under penalty of perjury to the best of her knowledge, information
26 and belief by the mother of the dependent child, when acknowledged
27 by the putative father before a clerk of the court having
28 jurisdiction over such matters or a notary public and filed with
29 and approved by the judge of * * * the court having jurisdiction
30 over such matters, shall have the same force and effect,
31 retroactively and prospectively, in accordance with the terms of
32 said agreement, as an order of filiation and support entered by
33 the court, and shall be enforceable and subject to modification in
34 the same manner as is provided by law for orders of the court in
35 such cases.

36 (3) At any time after filing with the court having
37 continuing jurisdiction of such matters of an acknowledgment of
38 paternity in which a provision of support has not been entered,
39 upon notice the defendant shall be required to appear in court at
40 any time and place named therein, to show cause, if any he can,
41 why the court should not enter an order for the support of the
42 child by periodic payments. The order may include provisions for
43 reimbursement for medical expenses incident to the pregnancy and
44 the birth of the child, accrued maintenance and reasonable



45 expenses of the action under this subsection on the acknowledgment
46 of paternity previously filed with said court. Notice by the
47 department to the defendant shall be given by certified mail,
48 restricted delivery, return receipt requested at his last known
49 mailing address and without the requirement of a summons being
50 issued, and shall be deemed complete as of the date of delivery as
51 evidenced by the return receipt. The required notice may also be
52 delivered by personal service in accordance with Rule 4 of the
53 Mississippi Rules of Civil Procedure insofar as service of an
54 administrative order or notice is concerned. Provided, that in
55 the case of a child who, upon reaching the age of twenty-one (21)
56 years, is mentally or physically incapable of self-support, the
57 putative father shall not be relieved of the duty of support
58 unless said child is a long-term patient in a facility owned or
59 operated by the State of Mississippi. The prior judgment as to
60 paternity shall be res judicata as to that issue and shall not be
61 reconsidered by the court.

62 (4) Such agreements of support, acknowledgments,
63 declarations and affirmations of paternity and support shall * * *
64 be binding on the person executing the same whether he be an adult
65 or a minor and may include provisions for the reimbursement of
66 medical expenses incident to the pregnancy and birth of the child,
67 accrued maintenance and reasonable expenses of any action
68 previously filed before the court.



69 (5) In lieu of legal proceedings instituted to enforce an
70 order for support, a written stipulated agreement for the
71 provision of periodic payments towards an arrearage executed by
72 the defendant when acknowledged before a clerk of the court having
73 jurisdiction over such matters or a notary public and filed with
74 and approved by the judge of * * * the court having jurisdiction
75 over such matters shall have the same force and effect,
76 retroactively and prospectively, in accordance with the terms of
77 said agreement as a judgment for overdue support entered by the
78 court, and shall be enforceable and subject to modification in the
79 same manner as is provided by law for orders of the court in such
80 cases.

81 (6) All agreements entered into under the provisions as set
82 forth hereinabove shall be filed by the clerk of the court having
83 jurisdiction over such matters in the county in which they are
84 entered and filing fees shall be taxed to the responsible parent.

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

87 93-9-9. (1) Paternity may be determined upon the petition
88 of the mother, or father, the child or any public authority
89 chargeable by law with the support of the child; provided that
90 such an adjudication after the death of the defendant must be made
91 only upon clear and convincing evidence. If paternity has been
92 lawfully determined, or has been acknowledged in writing according
93 to the laws of this state, the liabilities of the noncustodial



94 parent may be enforced in the same or other proceedings by the
95 custodial parent, the child, or any public authority which has
96 furnished or may furnish the reasonable expenses of pregnancy,
97 confinement, education, necessary support and maintenance, and
98 medical or funeral expenses for the custodial parent or the child.
99 The trier of fact shall receive without the need for third-party
100 foundation testimony certified, attested or sworn documentation as
101 evidence of (a) childbirth records; (b) cost of filing fees; (c)
102 court costs; (d) services of process fees; (e) mailing cost; (f)
103 genetic tests and testing fees; (g) the department's attorney's
104 fees; (h) in cases where the state or any of its entities or
105 divisions have provided medical services to the child or the
106 child's mother, all costs of prenatal care, birthing, postnatal
107 care and any other medical expenses incurred by the child or by
108 the mother as a consequence of the mother's pregnancy or delivery;
109 and (i) funeral expenses. All costs and fees shall be ordered
110 paid to the Department of Human Services in all cases successfully
111 prosecuted with a minimum of Two Hundred Fifty Dollars (\$250.00)
112 in attorney's fees or an amount determined by the court without
113 submitting an affidavit. Proceedings may be instituted at any
114 time until such child attains the age of twenty-one (21) years
115 unless the child has been emancipated as provided in Section
116 93-5-23 and Section 93-11-65. In the event of court-determined
117 paternity, the surname of the child shall be that of the father,
118 unless the judgment specifies otherwise.



119 (2) If the alleged father in an action to determine
120 paternity to which the Department of Human Services is a party
121 fails to appear for a scheduled hearing after having been served
122 with process or subsequent notice consistent with the Rules of
123 Civil Procedure, his paternity of the child(ren) shall be
124 established by the court if * * * a written declaration in support
125 of establishing paternity made under penalty of perjury to the
126 best of her knowledge, information and belief by the mother
127 averring the alleged father's paternity of the child has
128 accompanied the complaint to determine paternity. * * * The
129 written declaration shall constitute sufficient grounds for the
130 court's finding of the alleged father's paternity without the
131 necessity of the presence or testimony of the mother at the said
132 hearing. The court shall, upon motion by the Department of Human
133 Services, enter a judgment of paternity. Any person who shall
134 willfully and knowingly file a false affidavit or who shall
135 willfully, intentionally and knowingly file a false written
136 declaration under penalty of perjury shall be subject to a fine of
137 not more than One Thousand Dollars (\$1,000.00).

138 (3) Upon application of both parents to the State Board of
139 Health and receipt by the State Board of Health of a sworn
140 acknowledgement of paternity executed by both parents subsequent
141 to the birth of a child born out of wedlock, the birth certificate
142 of the child shall be amended to show such paternity if paternity
143 is not shown on the birth certificate. Upon request of the



144 parents for the legitimization of a child under this section, the
145 surname of the child shall be changed on the certificate to that
146 of the father.

147 (4) (a) A signed voluntary acknowledgment of paternity is
148 subject to the right of any signatory to rescind the
149 acknowledgment within the earlier of:

150 (i) One (1) year; or

151 (ii) The date of a judicial proceeding relating to
152 the child, including a proceeding to establish a support order, in
153 which the signatory is a party.

154 (b) After the expiration of the one-year period
155 specified in subsection (4) (a) (i) of this section, a signed
156 voluntary acknowledgment of paternity may be challenged in court
157 only on the basis of fraud, duress or material mistake of fact,
158 with the burden of proof upon the challenger; the legal
159 responsibilities, including child support obligations, of any
160 signatory arising from the acknowledgment may not be suspended
161 during the pendency of the challenge, except for good cause shown.

162 (c) During the one-year time period specified in
163 subsection (4) (a) (i) of this section, the alleged father may
164 request genetic testing through the Department of Human Services
165 in accordance with the provisions of Section 93-9-21.

166 (d) The one-year time limit, specified in subsection
167 (4) (a) (i) of this section, for the right of the alleged father to
168 rescind the signed voluntary acknowledgement of paternity shall be



169 tolled from the date the alleged father files his formal
170 application for genetic testing with the Department of Human
171 Services until the date the test results are revealed to the
172 alleged father by the department. After the one-year time period
173 has expired, not including any period of time tolled for the
174 purpose of acquiring genetic testing through the department, the
175 provisions of subsection (4)(b) of this section shall apply.

176 **SECTION 3.** Section 93-9-21, Mississippi Code of 1972, is
177 amended as follows:

178 93-9-21. (1) (a) In all cases brought pursuant to Title
179 IV-D of the Social Security Act, upon * * * written declarations
180 of the mother, putative father, or the Department of Human
181 Services made under penalty of perjury to the best of his or her
182 knowledge, information and belief alleging paternity, the
183 department may issue an administrative order for paternity testing
184 which requires the mother, putative father and minor child to
185 submit themselves for paternity testing. The department shall
186 send the putative father a copy of the Administrative Order and a
187 Notice for Genetic Testing which shall include the date, time and
188 place for collection of the putative father's genetic sample. The
189 department shall also send the putative father a Notice and
190 Complaint to Establish Paternity which shall specify the date and
191 time certain of the court hearing by certified mail, restricted
192 delivery, return receipt requested. Notice shall be deemed
193 complete as of the date of delivery as evidenced by the return



194 receipt. The required notice may also be delivered by personal
195 service upon the putative father in accordance with Rule 4 of the
196 Mississippi Rules of Civil Procedure insofar as service of an
197 administrative order or notice is concerned.

198 (b) If the putative father does not submit to genetic
199 testing, the court shall, without further notice, on the date and
200 time previously set through the notice for hearing, review the
201 documentation of the refusal to submit to genetic testing and make
202 a determination as to whether the complaint to establish paternity
203 should be granted. The refusal to submit to such testing shall
204 create a rebuttable presumption of an admission to paternity by
205 the putative father.

206 (c) In any case in which the Department of Human
207 Services orders genetic testing, the department is required to
208 advance costs of such tests subject to recoupment from the alleged
209 father if paternity is established. If either party challenges
210 the original test results, the department shall order additional
211 testing at the expense of the challenging party.

212 (2) In any case in which paternity has not been established,
213 the court, on its own motion or on motion of the plaintiff or the
214 defendant, shall order the mother, the alleged father and the
215 child or children to submit to genetic tests and any other tests
216 which reasonably prove or disprove the probability of paternity.
217 If paternity has been previously established, the court shall only
218 order genetic testing pursuant to Section 93-9-10.



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

223 (3) Any party calling a witness or witnesses for the purpose
224 of testifying that they had sexual intercourse with the mother at
225 any possible time of conception of the child whose paternity is in
226 question shall provide all other parties with the name and address
227 of the witness at least twenty (20) days before the trial. If a
228 witness is produced at the hearing for the purpose provided in
229 this subsection but the party calling the witness failed to
230 provide the twenty-day notice, the court may adjourn the
231 proceeding for the purpose of taking a genetic test of the witness
232 before hearing the testimony of the witness if the court finds
233 that the party calling the witness acted in good faith.

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

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

239 (b) The Department of Human Services shall publicly
240 issue a request for proposals, and such requests for proposals
241 when issued shall contain terms and conditions relating to price,
242 technology and such other matters as are determined by the
243 department to be appropriate for inclusion or required by law.



244 After responses to the request for proposals have been duly
245 received, the department shall select the lowest and best bid(s)
246 on the basis of price, technology and other relevant factors and
247 from such proposals, but not limited to the terms thereof,
248 negotiate and enter into contract(s) with one or more of the
249 laboratories submitting proposals. The department shall prepare a
250 list of all laboratories with which it has contracted on these
251 terms. The list and any updates thereto shall be distributed to
252 all chancery clerks. To be eligible to appear on the list, a
253 laboratory must meet the following requirements:

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

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

258 (iii) The laboratory must have participated in the
259 competitive procurement process.

260 **SECTION 4.** This act shall take effect and be in force from
261 and after July 1, 2020.

