

By: Senator(s) Turner-Ford

To: Judiciary, Division A

SENATE BILL NO. 2329

1 AN ACT TO AMEND SECTION 93-9-10, MISSISSIPPI CODE OF 1972, TO  
2 CLARIFY THE CIRCUMSTANCES UNDER WHICH A PUTATIVE FATHER CANNOT  
3 FURTHER CONTEST PATERNITY; AND FOR RELATED PURPOSES.

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

5 **SECTION 1.** Section 93-9-10, Mississippi Code of 1972, is  
6 amended as follows:

7 93-9-10. (1) This section establishes circumstances under  
8 which a legal father may disestablish paternity and terminate a  
9 child support obligation when the legal father is not the  
10 biological father of the child. To disestablish paternity and  
11 terminate a child support obligation, the legal father must file a  
12 petition in the court having jurisdiction over the child support  
13 obligation. The petition must be served on the mother or other  
14 legal guardian or custodian of the child. If the Department of  
15 Human Services is or has been a party to the establishment of  
16 paternity or collection of child support, the Attorney General of  
17 the State of Mississippi must be served with a copy of the  
18 petition. The petition must include:



19 (a) An affidavit executed by the petitioner that newly  
20 discovered evidence relating to the paternity of the child has  
21 come to the petitioner's knowledge since the initial paternity  
22 determination.

23 (b) (i) The results of a scientific test or tests that  
24 are generally acceptable to the scientific community to show a  
25 probability of paternity, administered within one (1) year before  
26 the filing of the petition, which results indicate that the legal  
27 father is excluded as being the biological father of the child, or

28 (ii) An affidavit executed by the petitioner  
29 stating that he did not have access to the child to have the  
30 scientific testing performed before the filing of the petition. A  
31 petitioner who files such an affidavit can request in the petition  
32 that the court order the child and mother, if available, be  
33 tested.

34 (2) The court shall grant relief on a petition filed in  
35 accordance with subsection (1) of this section upon a finding by  
36 the court of all of the following:

37 (a) Newly discovered evidence relating to the paternity  
38 of the child has come to the petitioner's knowledge since the  
39 initial paternity determination.

40 (b) The scientific testing required in subsection  
41 (1)(b) of this section was properly conducted.

42 (c) The legal father ordered to pay child support has  
43 not adopted the child.



44 (d) The child was not conceived by artificial  
45 insemination while the legal father ordered to pay support and the  
46 child's mother were married.

47 (e) The legal father ordered to pay child support did  
48 not act to prevent the biological father of the child from  
49 asserting his parental rights with respect to the child.

50 (3) Notwithstanding subsection (2) of this section, a court  
51 shall not set aside the paternity determination or child support  
52 order if the legal father engaged in any of the following conduct  
53 except upon a showing of good cause:

54 (a) Married or cohabited with the mother of the child  
55 and voluntarily assumed the parental obligation and duty to  
56 support the child after having knowledge that he is not the  
57 biological father of the child;

58 (b) Consented to be named as the biological father on  
59 the child's birth certificate and signed the birth certificate  
60 application or executed a simple acknowledgment of paternity and  
61 failed to withdraw consent or acknowledgment within the time  
62 provided for by law in Sections 93-9-9 and 93-9-28, unless he can  
63 prove fraud, duress or material mistake of fact;

64 (c) Signed a stipulated agreement of paternity that has  
65 been approved by order of the court unless the legal father can  
66 prove fraud, duress or material mistake of fact;



67 (d) Signed a stipulated agreement of support that has  
68 been approved by order of the court after having knowledge that he  
69 is not the biological father of the child;

70 (e) Been named as the legal father or ordered to pay  
71 support by valid order of the court after having declined genetic  
72 testing; or

73 (f) Failed to appear for a scheduled genetic testing  
74 draw pursuant to a valid court order compelling him to submit to  
75 genetic testing.

76 (4) If the petitioner fails to make the requisite showing  
77 required by this section, the court shall deny the petition.

78 (5) Relief granted pursuant to this section is limited to  
79 the issues of prospective child support payments, past-due child  
80 support payments, termination of parental rights, custody, and  
81 visitation privileges as otherwise provided by law. This section  
82 shall not be construed to create a cause of action to recover  
83 child support paid before the filing of the petition to  
84 disestablish paternity.

85 (6) The duty to pay child support and other legal  
86 obligations for the child shall not be suspended while the  
87 petition is pending except for good cause. However, the court may  
88 order that amounts paid as child support be held by the court or  
89 the Department of Human Services until final determination of  
90 paternity has been made.



91 (7) The party requesting genetic testing shall pay any fees  
92 associated with the testing.

93 (8) In any action brought pursuant to this section, the  
94 court on its own motion, or on the motion of any party, may order  
95 the biological mother and child, through the child's legal  
96 guardian or custodian, to submit to genetic testing.

97 (9) If the relief sought under this petition is not granted  
98 by the court, the petitioner shall be assessed the court costs,  
99 genetic testing fees and reasonable attorney's fees.

100 **SECTION 2.** This act shall take effect and be in force from  
101 and after its passage.

