

1 are to be terminated; and providing that article does not
2 affect adoptions.

3 *Be it enacted by the Legislature of West Virginia:*

4 That the Code of West Virginia, 1931, as amended, be amended
5 by adding thereto a new article, designated §48-24A-101, §48-24A-
6 102, §48-24A-103, §48-24A-104, §48-24A-105, §48-24A-106, §48-24A-
7 107, §48-24A-108, §48-24A-109, §48-24A-110, §48-24A-111, §48-24A-
8 112, §48-24A-113 and §48-24A-114, all to read as follows:

9 **ARTICLE 24A. PATERNITY JUSTICE ACT OF 2011.**

10 **§48-24A-101. Short title.**

11 This article may be cited as the "Paternity Justice Act of
12 2011".

13 **§48-24A-102. Findings and declarations.**

14 The Legislature finds and declares all of the following:

15 (a) DNA genetic testing is recognized as scientifically valid
16 by the courts of this country.

17 (b) In the year 1995, the State of West Virginia recognized
18 the validity of DNA testing and created a procedure for an
19 individual convicted of certain crimes to petition a court to
20 reopen his or her case.

21 (c) A man who is adjudicated to be the father of a child by a
22 court in a paternity action when he is not actually the biological
23 father of the child may be financially liable for up to eighteen
24 years of child support.

1 (d) The American Association of Blood Banks reported that out
2 of a total of more than two hundred eighty thousand cases evaluated
3 in 1999, almost thirty percent excluded the tested individual as
4 the biological father.

5 (e) A growing number of states now have antifraud paternity
6 statutes which permit an individual previously adjudicated to be
7 the father of a child to reopen his case and present or obtain DNA
8 testing if he believes he may have been erroneously identified as
9 the father.

10 (f) Respect for the judicial system is greatly diminished when
11 the laws do not permit the correction of an injustice.

12 For these reasons, it is the intent of the Legislature to
13 enact the Paternity Justice Act of 2011.

14 **§48-24A-103. Definitions.**

15 For purposes of this article, the following definitions shall
16 apply:

17 (a) "Child" means the child of a previously established
18 father, as determined by the court in a judgment that is the
19 subject of a motion to vacate brought pursuant to this article.

20 (b) "Previously established father" means a person identified
21 as the father of a child in a judgment issued by the court in which
22 the issue of paternity was, or could have been, raised.

23 (c) "Previously established mother" means a person identified
24 as the mother of a child in a judgment issued by the court that is

1 the subject of a motion to vacate brought pursuant to this article.

2 **§48-24A-104. Motion to vacate judgment establishing paternity.**

3 Notwithstanding any other provision of law, after the
4 expiration of the time period within which a judgment may be
5 vacated pursuant to Rule 60 of the West Virginia Rules of Civil
6 Procedure, the previously established mother of a child, the
7 previously established father of a child, the child, or the legal
8 representative of any of these persons may move to vacate a
9 judgment establishing paternity if genetic testing indicates that
10 the previously established father of a child is not the biological
11 father of the child.

12 **§48-24A-105. Vacating judgment of paternity.**

13 (a) A court shall grant a motion to vacate a judgment
14 establishing paternity only if all of the following conditions are
15 met:

16 (1) The motion to vacate is filed prior to the date the child
17 reaches eighteen years of age.

18 (2) The motion is filed in a court of proper venue.

19 (3) The motion contains, at a minimum, all of the following
20 information, if known:

21 (A) The legal name, age, county of residence and residence
22 address of the child.

23 (B) The names, mailing addresses and counties of residence,
24 or, if deceased, the date and place of death, of the following

1 persons:

2 (i) The previously established father and the previously
3 established mother, and the biological mother and father of the
4 child.

5 (ii) The guardian of the child, if any.

6 (iii) Any person who has physical custody of the child.

7 (iv) The guardian ad litem of the child, as appointed pursuant
8 to the provisions of section one hundred-six of this article.

9 (C) A declaration that the person filing a motion to vacate a
10 judgment of paternity believes that the previously established
11 father is not the biological father of the child, the specific
12 reasons for this belief and a declaration that the person desires
13 that the paternity judgment be vacated. The moving party is not
14 required to present evidence of a paternity test indicating that
15 the previously established father is not the biological father of
16 the child in order to bring this motion.

17 (4) The court finds that the conclusions of the expert, as
18 supported by the evidence, are that the previously established
19 father is not the biological father of the child.

20 (b) A motion to vacate the judgment of paternity shall include
21 a proof of service upon the following persons, excluding the person
22 bringing the motion:

23 (1) The previously established mother.

24 (2) The previously established father.

1 Sec. 651 et seq.).

2 **§48-24A-111. When order vacating judgment for paternity not to be**
3 **issued.**

4 A court may not issue an order vacating a judgment
5 establishing paternity pursuant to this article under any of the
6 following circumstances:

7 (a) The judgment was made or entered by a tribunal of another
8 state, even if the enforcement of that judgment is sought in this
9 state, unless genetic tests exclude the previously established
10 father as the biological father.

11 (b) The judgment was made or entered in this state and genetic
12 tests were conducted which did not exclude the previously
13 established father as the biological father of the child or the
14 judgment resulted from a trial or contested hearing in which the
15 issue of paternity was, or could have been, raised and in which the
16 defendant was represented by counsel.

17 **§48-24A-112. Modification of child support.**

18 Notwithstanding any other provision of law, if the court
19 grants a motion to vacate a paternity judgment pursuant to this
20 article, the court shall modify any order for child support issued
21 on the basis of that previous judgment of paternity.

22 **§48-24A-113. When prior orders to be terminated.**

23 Except as otherwise provided in an order granting a motion to
24 vacate pursuant to this article, upon the granting of that motion,

1 all prior orders granting custody or visitation to a previously
2 established father may be terminated by the court. In making this
3 determination, the court shall consider all of the following
4 circumstances:

5 (a) The nature, duration and quality of any relationship
6 between the previously established father and the child, including
7 the duration and frequency of any time periods during which the
8 child and the previously established father resided in the same
9 household or enjoyed a parent-child relationship.

10 (b) Additional factors deemed by the court to be relevant to
11 its determination of the child's best interests.

12 **§48-24A-114. Article does not affect adoptions.**

13 This article does not establish a basis for termination of any
14 adoption, and does not affect any obligation of an adoptive parent
15 to an adoptive child.

NOTE: The purpose of this bill is to provide a procedure for vacating a judgment of paternity when there is genetic evidence that excludes the previously established father as the biological father of the child in question.

This article is new; therefore, strike-throughs and underscoring have been omitted.