1	Senate Bill No. 502
2	(By Senators Boley and Nohe)
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4	[Introduced February 14, 2011; referred to the Committee on the
5	Judiciary; and then to the Committee on Finance.]
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10	A BILL to amend the Code of West Virginia, 1931, as amended, by
11	adding thereto a new article, designated §48-24A-101, §48-24A-
12	102, §48-24A-103, §48-24A-104, §48-24A-105, §48-24A-106, §48-
13	24A-107, §48-24A-108, §48-24A-109, §48-24A-110, §48-24A-111,
14	§48-24A-112, §48-24A-113 and §48-24A-114, all relating
15	creating the Paternity Justice Act of 2011; providing short
16	title; legislative findings and declarations; providing
17	definitions; allowing motion to vacate judgment of paternity;
18	when motion is to be granted; appointing guardian ad litem for
19	child; providing for genetic testing procedures to aid in
20	determination of paternity; who to pay costs of genetic
21	testing; when order vacating judgment of paternity not to be
22	entered; what to be considered in vacating judgment of
23	paternity; modification of child support; when Bureau for
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Child Support Enforcement may participate; when prior orders

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- 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.
- This article may be cited as the "Paternity Justice Act of 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 (3) The Bureau for Child Support Enforcement, if services are
- 2 being provided to the child pursuant to Title IV-D or IV-E of the
- 3 Social Security Act (42 U.S.C. Sec. 301 et seq.).
- 4 §48-24A-106. Guardian ad litem for child.
- 5 A guardian ad litem shall be appointed for the child to 6 represent the best interests of the child in an action brought 7 pursuant to this article.
- 8 §48-24A-107. Genetic testing procedures to aid in determination
  9 of paternity.
- Any genetic testing used to support the motion to vacate shall be conducted in accordance with the provisions of section one 12 hundred-three, article twenty-four of this chapter. The court may, 13 at the request of any person authorized to make a motion pursuant 14 to this article or upon its own motion, order genetic testing to 15 assist the court in making a determination whether the previously 16 established father is the biological father of the child.
- 17 §48-24A-108. When court to grant motion to vacate paternity

  18 judgment.
- If the court determines that the genetic test results conducted in accordance with the provisions of section one hundred-three, article twenty-four of this chapter exclude the previously established father as the biological father of the child, the court shall grant the motion to vacate the paternity judgment.
- 24 §48-24A-109. Costs of genetic testing.

- 1 The costs of genetic testing ordered pursuant to section one
- 2 hundred-seven of this article, the costs of the guardian ad litem
- 3 appointed pursuant to section one hundred-six of this article and
- 4 all court costs, including attorney's fees, shall be paid by the
- 5 nonprevailing party.

# 6 §48-24A-110. When Bureau for Child Support Enforcement may

- 7 participate.
- 8 (a) The Bureau for Child Support Enforcement may participate
- 9 in a proceeding initiated pursuant to this article only if it is
- 10 providing services as specified in Title IV-D of the Social
- 11 Security Act (42 U.S.C. Sec. 651 et seq.) at the time the motion is
- 12 filed pursuant to this article to a child who is the subject of
- 13 that motion, and may participate in the proceeding only if those
- 14 services are being provided at the time the motion is heard.
- 15 (b) When the Bureau for Child Support Enforcement participates
- 16 in a proceeding under this article, it may obtain an administrative
- 17 order for genetic tests as described in section one hundred-seven
- 18 of this article.
- 19 (c) The Bureau for Child Support Enforcement is not
- 20 responsible for the costs of genetic testing when performed in
- 21 connection with a proceeding under this article, nor is the Bureau
- 22 for Child Support Enforcement required to provide for, or assist
- 23 in, genetic testing in any case in which it is not providing
- 24 services under Title IV-D of the Social Security Act (42 U.S.C.

- 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.
- 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.