

By Representative Smith

1                                   A bill to be entitled  
 2           An act relating to paternity fraud; creating s.  
 3           409.25576, F.S.; creating a child support  
 4           restitution enforcement program within the  
 5           Department of Revenue; providing criteria for  
 6           the enforcement of the program by the  
 7           department; creating s. 742.125, F.S.;  
 8           requiring paternity testing under certain  
 9           circumstances; providing a definition;  
 10          providing for the identification of possible  
 11          prospective paternity candidates; providing for  
 12          child support obligations; providing for  
 13          retroactive restitution; providing an effective  
 14          date.

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 16 Be It Enacted by the Legislature of the State of Florida:

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 18           Section 1. Section 409.25576, Florida Statutes, is  
 19          created to read:

20           409.25576 Child support restitution enforcement  
 21          program.--

22           (1) The child support restitution enforcement program  
 23          is created within the Department of Revenue. The department  
 24          shall proceed with enforcement in cases where there has been  
 25          fraud or error in divorces which occurred prior to the  
 26          court-mandated DNA paternity testing required in s. 742.125.

27           (a) If the mother of the child offers restitution  
 28          without requiring the ex-husband to bring a petition or motion  
 29          in front of the court, the interest rate used shall be 6  
 30          percent and the interest shall be compounded monthly. The  
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1 state attorney shall not bring criminal proceedings against  
2 the child's mother for fraud.

3 (b) If the husband is forced to petition or motion the  
4 court to request restitution and the mother of the child  
5 agrees without counter argument, the interest rate used shall  
6 be 8 percent and the interest shall be compounded monthly.

7 1. The husband involved will be allowed to pursue  
8 criminal proceedings against the mother for fraud.

9 2. If the husband requests restitution before the  
10 court and the mother files counter petitions to disallow  
11 restitution, the interest rate shall be calculated at 10  
12 percent, and the interest shall be compounded on a  
13 semi-monthly or weekly basis, depending on the payment  
14 frequency in the original child support order. In this  
15 instance, the mother shall bear all costs for paternity  
16 testing and court costs, including attorney fees for the  
17 ex-husband. Criminal proceedings for felony perjury and  
18 findings of fraud against the mother shall be automatically  
19 instituted by the appropriate state attorney's office.

20 (c) The restitution schedules set forth in this  
21 section shall not bar the defrauded father or the child,  
22 either during minority or at majority, in proceeding with a  
23 civil damages lawsuit against the mother or the biological  
24 father.

25 (d) The amount of prior paid child support, including  
26 principal and interest, shall be paid in a one-time payment to  
27 the husband.

28 1. If a one-time payment is not feasible, the mother's  
29 wages shall be garnished at the same percentage rate of  
30 previous child support payments.

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1           2. If the husband is currently paying child support  
2 for other biological children born of the same marriage, then  
3 the child support payments shall be offset by the restitution  
4 amount.

5           3. The mother shall be subject to the same actions for  
6 nonpayment as a person not paying child support, which  
7 includes, in addition to any other action:

8           a. Loss of drivers license.

9           b. Loss of professional licenses, including suspension  
10 from The Florida Bar.

11           c. Seizure of IRS tax refunds.

12           d. Seizure of worker's compensation and other  
13 insurance moneys.

14           e. Seizure of retirement, IRA, and Keogh funds.

15           f. Seizure of bank accounts and personal property.

16           g. Jail time for contempt of court for nonpayment of  
17 court-ordered restitution.

18           (2) The time limit for paternity challenges in divorce  
19 and child support proceedings shall be prior to the 21st  
20 birthday of the child, or if more than one child is involved,  
21 the time limit shall be upon the 21st birthday of the youngest  
22 child.

23           (3) If, during any legal action relating to child  
24 custody or support, or any time after the initial child  
25 support case is closed in which the husband has a child  
26 support obligation, the child's mother states that the child  
27 is not the biological offspring of the person ordered to pay  
28 child support, such statement shall constitute prima facie  
29 evidence of fraud and perjury with all punishments and  
30 penalties provided by law.

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1           Section 2. Section 742.125, Florida Statutes, is  
2 created to read:

3           742.125 Paternity testing required; identification of  
4 paternity candidates; child support obligation.--

5           (1) As used in this section, the term "husband" means  
6 current husband, ex-husband, ex-spouse, or a male married to  
7 the child's biological mother when the child was conceived or  
8 born.

9           (2) Any other provision of law to the contrary  
10 notwithstanding after the effective date of this act, in all  
11 divorce or child support cases, DNA paternity testing shall be  
12 ordered by the court, at the initial hearing, except in the  
13 case of adopted children and children from a previous  
14 marriage.

15           (a) If DNA testing determines that the husband is not  
16 the biological father of one or more of the children, the  
17 mother shall be required to identify all possible prospective  
18 paternity candidates.

19           1. The mother's lack of compliance in identifying  
20 prospective paternity candidates will be construed as indirect  
21 criminal contempt of court.

22           2. The penalties for lack of compliance will be the  
23 maximum allowed under the law.

24           (b) The court shall require a child support obligation  
25 of the biological father.

26           (c) The husband shall not be required to pay mandatory  
27 child support nor be subject to any actions relating to child  
28 support obligations from the court or child support  
29 enforcement agencies.

30           (d) If the biological father is deceased or cannot be  
31 located, the husband may make informed consent to pay child

1 support, but shall not be obligated or required by law to pay  
2 child support. If the husband voluntarily consents to pay  
3 child support in place of the child's biological father, he  
4 may elect at any time to cease paying child support upon 60  
5 day's notice to the mother and the court.

6 1. The husband, if he is voluntarily paying the child  
7 support obligation in place of the child's biological father,  
8 shall receive no interference from the children's mother  
9 regarding visitation or contact with the child.

10 2. If the child's mother interferes in the visitation  
11 of the current husband with the child he is supporting, the  
12 voluntary child support of the husband shall cease immediately  
13 without 60 day's notice to the court.

14 (e) The husband retains the right to sue the  
15 biological father or his estate for punitive damages and  
16 recovery of costs related to support of the child.

17 (3) Retroactive restitution may be awarded by the  
18 court in past divorce cases where child support is or has been  
19 paid and in which later DNA evidence shows that the husband is  
20 not the biological father of the child in question. The amount  
21 of the restitution shall be the entire amount paid for the  
22 child support in question, plus interest. The amount shall be  
23 calculated by computing a schedule where each child support  
24 payment will be treated as if it were a deposit into a savings  
25 account at current compound interest rates.

26 Section 3. This act shall take effect July 1, 2002.  
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HOUSE SUMMARY

Creates a child support restitution enforcement program within the Department of Revenue to proceed with enforcement where there has been fraud or error in divorce proceedings which occurred prior to court-mandated DNA testing. Requires DNA paternity testing in all divorce and child support cases. See bill for details.