

1 A bill to be entitled
 2 An act relating to paternity; permitting a motion to set
 3 aside a determination of paternity; specifying contents of
 4 the motion; providing standards upon which relief shall be
 5 granted; providing remedies; providing that child support
 6 obligations shall not be suspended while a motion is
 7 pending; providing for genetic testing; providing for
 8 assessment of costs and attorney's fees; providing an
 9 effective date.

10

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

12

13 Section 1. (1) In any action in which a male is required
 14 to pay child support as the father of a child, a motion to set
 15 aside a determination of paternity may be made at any time upon
 16 the grounds set forth in this section. Any such motion shall be
 17 filed in the circuit court and shall include:

18 (a) An affidavit executed by the movant that newly
 19 discovered evidence has come to the movant's knowledge since the
 20 entry of judgment.

21 (b) The results of scientific tests that are generally
 22 acceptable within the scientific community to show a probability
 23 of paternity, administered within 90 days prior to the filing of
 24 such motion, which results indicate that the male ordered to pay
 25 such child support cannot be the father of the child for whom
 26 support is required.

27 (c) An affidavit executed by the movant stating that the
 28 movant is current on all child support payments.

29 (2) The court shall grant relief on a motion filed in
30 accordance with subsection (1) upon a finding by the court of
31 all of the following:

32 (a) The genetic test required in paragraph (1)(b) was
33 properly conducted.

34 (b) The male is current on all child support payments.

35 (c) The male ordered to pay child support has not adopted
36 the child.

37 (d) The child was not conceived by artificial insemination
38 while the male ordered to pay child support and the child's
39 mother were in wedlock.

40 (e) The male ordered to pay child support did not act to
41 prevent the biological father of the child from asserting his
42 paternal rights with respect to the child.

43 (f) The male ordered to pay child support with knowledge
44 that he is not the biological father of the child has not:

45 1. Married the mother of the child and voluntarily assumed
46 the parental obligation and duty to pay child support;

47 2. Acknowledged his paternity of the child in a sworn
48 statement;

49 3. Been named as the child's biological father on the
50 child's birth certificate with his consent;

51 4. Been required to support the child because of a
52 voluntary written promise;

53 5. Received written notice from any state agency or any
54 court directing him to submit to genetic testing which he
55 disregarded;

56 6. Signed a voluntary acknowledgment of paternity as
 57 provided in s. 742.10(4), Florida Statutes; or

58 7. Proclaimed himself to be the child's biological father.

59 (3) In the event the movant fails to make the requisite
 60 showing required by this section, the court shall deny the
 61 motion.

62 (4) In the event relief is granted pursuant to this
 63 section, relief shall be limited to the issues of prospective
 64 child support payments, past due child support payments, and
 65 termination of parental rights, custody, and visitation rights.
 66 This section shall not be construed to create a cause of action
 67 to recover child support that was previously paid.

68 (5) The duty to pay child support and other legal
 69 obligations for the child shall not be suspended while the
 70 motion is pending except for good cause shown. However, the
 71 court may order the child support be held in the registry of the
 72 court until final determination of paternity has been made.

73 (6)(a) In an action brought pursuant to this section, if
 74 the genetic test results submitted in accordance with paragraph
 75 (1)(b) are provided solely by the male ordered to pay child
 76 support, the court on its own motion may, and on the motion of
 77 any party shall, order the child's mother, the child, and the
 78 male ordered to pay child support to submit to genetic tests.
 79 The court shall provide that such genetic testing be done no
 80 more than 30 days after the court issues its order.

81 (b) If the mother of the child or the male ordered to pay
 82 child support willfully fails to submit to genetic testing or if
 83 either such party is the custodian of the child and willfully

84 fails to submit the child for testing, the court shall issue an
85 order determining the relief on the motion against the party so
86 failing to submit to genetic testing. If a party shows good
87 cause for failing to submit to genetic testing, such failure
88 shall not be considered willful.

89 (c) The party requesting genetic testing shall pay any
90 fees charged for the tests. If the custodian of the child is
91 receiving services from an administrative agency in its role as
92 an agency providing enforcement of child support orders, such
93 agency shall pay the cost of genetic testing if it requests the
94 test and may seek reimbursement for the fees from the person
95 against whom the court assesses the costs of the action.

96 (7) If relief on a motion filed in accordance with this
97 section is not granted, the court shall assess the costs of the
98 action and attorney's fees against the movant.

99 Section 2. This act shall take effect July 1, 2005.