

CHAMBER ACTION

1 The Civil Justice Committee recommends the following:

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3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to paternity; permitting a petition to set
7 aside a determination of paternity; specifying contents of
8 the petition; providing standards upon which relief shall
9 be granted; providing remedies; providing that child
10 support obligations shall not be suspended while a
11 petition is pending; providing for genetic testing;
12 providing for assessment of costs and attorney's fees;
13 providing an effective date.

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

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

22 (a) An affidavit executed by the petitioner that newly
 23 discovered evidence has come to the petitioner's knowledge since
 24 the entry of judgment.

25 (b) The results of scientific tests that are generally
 26 acceptable within the scientific community to show a probability
 27 of paternity, administered within 90 days prior to the filing of
 28 such petition, which results indicate that the male ordered to
 29 pay such child support cannot be the father of the child for
 30 whom support is required. A male who suspects he is not the
 31 father but does not have access to the child to have genetic
 32 testing performed may file a petition requesting the court to
 33 order the child to be tested.

34 (c) An affidavit executed by the petitioner stating that
 35 the petitioner is current on all child support payments for the
 36 child for whom relief is sought.

37 (2) The court shall grant relief on a petition filed in
 38 accordance with subsection (1) upon a finding by the court of
 39 all of the following:

40 (a) The genetic test required in paragraph (1)(b) was
 41 properly conducted.

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

43 (c) The male ordered to pay child support has not adopted
 44 the child.

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

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

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

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

55 2. Acknowledged his paternity of the child in a sworn
 56 statement;

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

59 4. Been required to support the child because of a
 60 voluntary written promise;

61 5. Received written notice from any state agency or any
 62 court directing him to submit to genetic testing which he
 63 disregarded;

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

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

67 (3) In the event the petitioner fails to make the
 68 requisite showing required by this section, the court shall deny
 69 the petition.

70 (4) In the event relief is granted pursuant to this
 71 section, relief shall be limited to the issues of prospective
 72 child support payments, past due child support payments, and
 73 termination of parental rights, custody, and visitation rights.
 74 The male's previous status as father continues to be in
 75 existence until the order granting relief is rendered. All

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76 | previous lawful actions taken based on reliance on that status
77 | are confirmed. This section shall not be construed to create a
78 | cause of action to recover child support that was previously
79 | paid.

80 | (5) The duty to pay child support and other legal
81 | obligations for the child shall not be suspended while the
82 | petition is pending except for good cause shown. However, the
83 | court may order the child support to be held in the registry of
84 | the court until final determination of paternity has been made.

85 | (6)(a) In an action brought pursuant to this section, if
86 | the genetic test results submitted in accordance with paragraph
87 | (1)(b) are provided solely by the male ordered to pay child
88 | support, the court on its own motion may, and on the petition of
89 | any party shall, order the child's mother, the child, and the
90 | male ordered to pay child support to submit to genetic tests.
91 | The court shall provide that such genetic testing be done no
92 | more than 30 days after the court issues its order.

93 | (b) If the mother of the child or the male ordered to pay
94 | child support willfully fails to submit to genetic testing or if
95 | either such party is the custodian of the child and willfully
96 | fails to submit the child for testing, the court shall issue an
97 | order determining the relief on the petition against the party
98 | so failing to submit to genetic testing. If a party shows good
99 | cause for failing to submit to genetic testing, such failure
100 | shall not be considered willful.

101 | (c) The party requesting genetic testing shall pay any
102 | fees charged for the tests. If the custodian of the child is
103 | receiving services from an administrative agency in its role as

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104 | an agency providing enforcement of child support orders, that
105 | agency shall pay the cost of genetic testing if it requests the
106 | test and may seek reimbursement for the fees from the person
107 | against whom the court assesses the costs of the action.

108 | (7) If relief on a petition filed in accordance with this
109 | section is not granted, the court shall assess the costs of the
110 | action and attorney's fees against the petitioner.

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