

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

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3 Section 1. Section 742.109, Florida Statutes, is
4 created to read:

5 742.109 Determining paternity; motion to set aside a
6 determination of paternity; newly discovered evidence.--

7 (1) In any action in which a male is required to pay
8 child support as the father of a child, a motion to set aside
9 a determination of paternity may be made at any time under the
10 conditions set forth in this section. The motion must be filed
11 in the circuit court that initially determined the paternity
12 of the child. The motion must include:

13 (a) An affidavit executed by the movant that the newly
14 discovered evidence has come to movant's knowledge since the
15 entry of the initial judgment of paternity; and

16 (b) The results from scientifically credible
17 parentage-determination genetic testing, authorized under s.
18 742.12 and administered within 90 days before the filing of
19 the motion. The results must show that there is a 0 percent
20 probability that the male ordered to pay child support is the
21 father of the child for whom support is required.

22 (2) The court shall grant the motion if it finds that
23 the genetic test required in paragraph (1)(b) was properly
24 conducted and that the male ordered to pay child support:

25 (a) Has not adopted the child;

26 (b) Was not married to the mother of the child who was
27 conceived by artificial insemination;

28 (c) Did not act to prevent the biological father of
29 the child from asserting his paternal rights with respect to
30 the child; and

31 (d) Has not:

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

3 2. Acknowledged his paternity of the child in a sworn
4 statement;

5 3. Been named as the biological father of the child on
6 the birth certificate of the child with his consent;

7 4. Been required to support the child because of a
8 written voluntary promise;

9 5. Received written notice from any state agency or
10 any court directing him to submit to genetic testing which he
11 disregarded;

12 6. Signed a voluntary acknowledgment of paternity; or

13 7. Proclaimed himself to be the biological father of
14 the child.

15 (3) If the movant fails to make the requisite showing
16 provided in subsection (2), the court shall deny the motion
17 and dismiss the case.

18 (4) If the court finds by clear and convincing
19 evidence that the male is not the father of the child, it
20 shall grant relief that is limited to the issues of
21 prospective child support payments and past due child support
22 payments.

23 (5) The duty to pay child support and other legal
24 obligations for the child may not be suspended during the time
25 the motion is pending except for good cause shown. However,
26 the court may order that the child support be held in the
27 registry of the court until a final determination of paternity
28 is made.

29 (6)(a) In any action brought under this section, if
30 the genetic test results submitted in accordance with
31 paragraph (1)(b) are provided solely by the male ordered to

1 pay child support, the court on its own motion may, and on the
2 motion of any party shall, order the mother of the child, the
3 child, and the male ordered to pay child support to submit to
4 genetic tests. The court must provide that the genetic tests
5 be conducted no more than 30 days after the court issues its
6 order.

7 (b) If the mother of the child or the male ordered to
8 pay child support willfully fails to submit to genetic
9 testing, or if either party is the custodian of the child and
10 willfully fails to submit the child for testing, the court
11 shall issue an order determining relief on the motion against
12 the party who fails to submit to genetic testing. If a party
13 shows good cause for failing to submit to genetic testing, the
14 failure may not be considered willful.

15 (c) The party requesting genetic testing shall pay any
16 fees charged for the tests. If the custodian of the child is
17 receiving public assistance under chapter 414, the Department
18 of Children and Family Services shall pay the cost of genetic
19 testing if it requests the tests and may seek reimbursement
20 for the fees from the person against whom the court assesses
21 the costs of the action.

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

25 Section 2. This act shall take effect July 1, 2005.
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SENATE SUMMARY

Provides that a male who is required to pay child support as the father of a child may file a motion to set aside a determination of paternity at any time. Requires that the motion include an affidavit and the results of a genetic test. Provides the conditions the male ordered to pay child support must satisfy in order to have the motion granted. Requires the court to deny the motion if all conditions are not satisfied. Requires a court to find all conditions met if supported by clear and convincing evidence. Provides that the duty to pay child support and other legal obligations is not suspended during the time the motion is pending. Authorizes the court to order that the child support be paid into the registry of the court until paternity is determined. Provides that the court may order additional testing under certain circumstances. Requires a court to assess the costs of the action and attorney's fees against the movant if the motion is not granted.