

By the Committee on Judiciary; and Senator Lawson

590-1958-05

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

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

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

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

(b) The results of scientific tests that are generally
acceptable within the scientific community to show a
probability of paternity, administered within 90 days prior to
the filing of such petition, which results indicate that the
male ordered to pay such child support cannot be the father of
the child for whom support is required. A male who suspects he
is not the father but does not have access to the child to

1 have genetic testing performed may file a petition requesting
2 the court to order the child to be tested.

3 (c) An affidavit executed by the petitioner stating
4 that the petitioner is current on all child support payments
5 for the child for whom relief is sought.

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

9 (a) The genetic test required in paragraph (1)(b) was
10 properly conducted.

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

12 (c) The male ordered to pay child support has not
13 adopted the child.

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

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

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

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

25 2. Acknowledged his paternity of the child in a sworn
26 statement;

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

29 4. Been required to support the child because of a
30 voluntary written promise;

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1 5. Received written notice from any state agency or
2 any court directing him to submit to genetic testing which he
3 disregarded;

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

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

8 (3) In the event the petitioner fails to make the
9 requisite showing required by this section, the court shall
10 deny the petition.

11 (4) In the event relief is granted pursuant to this
12 section, relief shall be limited to the issues of prospective
13 child support payments and termination of parental rights,
14 custody, and visitation rights. The male's previous status as
15 father continues to be in existence until the order granting
16 relief is rendered. All previous lawful actions taken based on
17 reliance on that status are confirmed. This section does not
18 create a cause of action to recover child support that was
19 previously paid.

20 (5) The duty to pay child support and other legal
21 obligations for the child may not be suspended while the
22 petition is pending except for good cause shown. However, the
23 court may order the child support to be held in the registry
24 of the court until final determination of paternity has been
25 made.

26 (6)(a) In an action brought pursuant to this section,
27 if the genetic test results submitted in accordance with
28 paragraph (1)(b) are provided solely by the male ordered to
29 pay child support, the court on its own motion may, and on the
30 petition of any party shall, order the child's mother, the
31 child, and the male ordered to pay child support to submit to

1 genetic tests. The court shall provide that such genetic
2 testing be done no more than 30 days after the court issues
3 its order.

4 (b) If the mother of the child or the male ordered to
5 pay child support willfully fails to submit to genetic testing
6 or if either such party is the custodian of the child and
7 willfully fails to submit the child for testing, the court
8 shall issue an order determining the relief on the petition
9 against the party so failing to submit to genetic testing. If
10 a party shows good cause for failing to submit to genetic
11 testing, such failure is not considered willful.

12 (c) The party requesting genetic testing shall pay any
13 fees charged for the tests. If the custodian of the child is
14 receiving services from an administrative agency in its role
15 as an agency providing enforcement of child support orders,
16 that agency shall pay the cost of genetic testing if it
17 requests the test and may seek reimbursement for the fees from
18 the person against whom the court assesses the costs of the
19 action.

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

23 Section 2. This act shall take effect July 1, 2005.
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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
Senate Bill 1456

The committee substitute makes the following changes to the underlying bill:

- Provides that the process to set aside a paternity determination begins with a petition, rather than a motion;
- Authorizes the father of record to request that a court order genetic testing of a child that is inaccessible to the father of record;
- Conditions relief from a prior paternity determination upon a finding that the father of record is current on his child support obligations;
- Terminates the parental rights of the father of record; and
- Affirms the validity of actions taken in reliance on a prior determination of paternity.