

By the Committees on Children and Families; Judiciary; and
Senator Lawson

586-2273-05

1 A bill to be entitled
2 An act relating to paternity; permitting a
3 petition to set aside a determination of
4 paternity; providing a time limit for filing
5 the petition; providing for notice of such
6 petition; specifying contents of the petition;
7 providing standards upon which relief shall be
8 granted; providing remedies; providing that
9 child support obligations shall not be
10 suspended while a petition is pending;
11 providing for genetic testing; providing for
12 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
18 required to pay child support as the father of a child, a
19 sworn petition to set aside a determination of paternity may
20 be made at any time prior to the child's 18th birthday upon
21 the grounds set forth in this section. Any such sworn petition
22 shall be filed in the circuit court and must be served on the
23 mother or other legal guardian or custodian. The petition
24 shall include:

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

28 (b) The results of scientific tests that are generally
29 acceptable within the scientific community to show a
30 probability of paternity, administered within 90 days prior to
31 the filing of such petition, which results indicate that the

1 male ordered to pay such child support cannot be the father of
2 the child for whom support is required. A male who suspects he
3 is not the father but does not have access to the child to
4 have genetic testing performed may file a petition requesting
5 the court to order the child to be tested.

6 (c) An affidavit executed by the petitioner stating
7 that the petitioner is current on all child support payments
8 for the child for whom relief is sought.

9 (2) The court shall grant relief on a petition filed
10 in accordance with subsection (1) if the court finds that
11 granting the petition is in the best interest of the child
12 and, in addition, finds all of the following:

13 (a) The genetic test required in paragraph (1)(b) was
14 properly conducted.

15 (b) The male ordered to pay child support is current
16 on all child support payments.

17 (c) The male ordered to pay child support has not
18 adopted the child.

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

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

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

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

30 2. Acknowledged his paternity of the child in a sworn
31 statement;

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

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

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

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

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

12 (3) In the event the petitioner fails to make the
13 requisite showing required by this section, the court shall
14 deny the petition.

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

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

30 (6)(a) In an action brought pursuant to this section,
31 if the genetic test results submitted in accordance with

1 paragraph (1)(b) are provided solely by the male ordered to
2 pay child support, the court on its own motion may, and on the
3 petition of any party shall, order the child's mother, the
4 child, and the male ordered to pay child support to submit to
5 genetic tests. The court shall provide that such genetic
6 testing be done no more than 30 days after the court issues
7 its order.

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

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

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

27 Section 2. This act shall take effect July 1, 2005.
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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
CS/SB 1456

Requires that the petition to set aside a determination of paternity be a sworn petition.

Provides that the petition may be filed at any time prior to a child's 18th birthday.

Requires that notice of the petition be served on the child's mother or other legal guardian or custodian.

Requires that, prior to granting a petition to set aside a determination of paternity, the court find that granting such a petition is in the child's best interest.