

1                   A bill to be entitled  
 2           An act relating to paternity; permitting a sworn petition  
 3           to set aside a determination of paternity prior to the  
 4           child's 18th birthday; specifying contents of the  
 5           petition; providing standards upon which relief shall be  
 6           granted; providing remedies; providing that child support  
 7           obligations shall not be suspended while a petition is  
 8           pending; providing for genetic testing; providing for  
 9           assessment of costs and attorney's fees; providing an  
 10          effective date.

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

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 14           Section 1. (1) In any action in which a male is required  
 15 to pay child support as the father of a child, a sworn petition  
 16 to set aside a determination of paternity may be made at any  
 17 time prior to the child's 18th birthday upon the grounds set  
 18 forth in this section. Any such sworn petition shall be filed in  
 19 the circuit court and shall be served on the mother or other  
 20 legal guardian or custodian. The petition shall include:

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

24           (b) The results of scientific tests that are generally  
 25 acceptable within the scientific community to show a probability  
 26 of paternity, administered within 90 days prior to the filing of  
 27 such petition, which results indicate that the male ordered to

28 pay such child support cannot be the father of the child for  
29 whom support is required. A male who suspects he is not the  
30 father but does not have access to the child to have genetic  
31 testing performed may file a petition requesting the court to  
32 order the child to be tested.

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

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

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

41 (b) The male ordered to pay child support is current on  
42 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 and termination of parental rights,
- 73 custody, and visitation rights. The male's previous status as
- 74 father continues to be in existence until the order granting
- 75 relief is rendered. All previous lawful actions taken based on
- 76 reliance on that status are confirmed. This section shall not be
- 77 construed to create a cause of action to recover child support
- 78 that was previously paid.
- 79        (5) The duty to pay child support and other legal
- 80 obligations for the child shall not be suspended while the
- 81 petition is pending except for good cause shown. However, the

82 court may order the child support to be held in the registry of  
83 the court until final determination of paternity has been made.

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

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

100 (c) The party requesting genetic testing shall pay any  
101 fees charged for the tests. If the custodian of the child is  
102 receiving services from an administrative agency in its role as  
103 an agency providing enforcement of child support orders, that  
104 agency shall pay the cost of genetic testing if it requests the  
105 test and may seek reimbursement for the fees from the person  
106 against whom the court assesses the costs of the action.

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

110 |        Section 2. This act shall take effect July 1, 2006.