

CHAMBER ACTION

1 The Future of Florida's Families Committee recommends the
2 following:

3
4 **Council/Committee Substitute**

5 Remove the entire bill and insert:

6 A bill to be entitled

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

17
18 Be It Enacted by the Legislature of the State of Florida:

19
20 Section 1. (1) This section establishes circumstances
21 under which a male may disestablish paternity or terminate a
22 child support obligation when the male is not the biological
23 father of the child. To disestablish paternity or terminate a

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24 child support obligation, the male must file a petition in the
25 court with continuing jurisdiction over the child support
26 obligation. The petition must also be served on the mother or
27 other legal guardian or custodian of the child. If the child
28 support obligation was determined administratively and has not
29 been ratified by a court, then the petition must be filed in the
30 circuit court where the mother or legal guardian or custodian of
31 the child resides. Such a petition must be served on the
32 Department of Revenue and on the mother or other legal guardian
33 or custodian. The petition must include:

34 (a) An affidavit executed by the petitioner that newly
35 discovered evidence relating to the paternity of the child has
36 come to the petitioner's knowledge since the initial paternity
37 determination or establishment of a child support obligation.

38 (b) The results of scientific tests that are generally
39 acceptable within the scientific community to show a probability
40 of paternity, administered within 90 days prior to the filing of
41 such petition, which results indicate that the male ordered to
42 pay such child support cannot be the father of the child for
43 whom support is required or an affidavit executed by the
44 petitioner stating that he did not have access to the child to
45 have scientific testing performed prior to the filing of the
46 petition. A male who suspects he is not the father but does not
47 have access to the child to have scientific testing performed
48 may file a petition requesting the court to order the child to
49 be tested.

50 (c) An affidavit executed by the petitioner stating that
51 the petitioner is current on all child support payments for the

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52 child for whom relief is sought or that he has substantially
53 complied with his child support obligation for the applicable
54 child and that any delinquency in his child support obligation
55 for that child arose from his inability for just cause to pay
56 the delinquent child support when the delinquent child support
57 became due.

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

61 (a) Newly discovered evidence relating to the paternity of
62 the child has come to the petitioner's knowledge since the
63 initial paternity determination or establishment of a child
64 support obligation.

65 (b) The scientific test required in paragraph (1)(b) was
66 properly conducted.

67 (c) The male ordered to pay child support is current on
68 all child support payments for the applicable child or that the
69 male ordered to pay child support has substantially complied
70 with his child support obligation for the applicable child and
71 that any delinquency in his child support obligation for that
72 child arose from his inability for just cause to pay the
73 delinquent child support when the delinquent child support
74 became due.

75 (d) The male ordered to pay child support has not adopted
76 the child.

77 (e) The child was not conceived by artificial insemination
78 while the male ordered to pay child support and the child's
79 mother were in wedlock.

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80 (f) The male ordered to pay child support did not act to
81 prevent the biological father of the child from asserting his
82 paternal rights with respect to the child.

83 (g) The child had not yet reached his or her 18th birthday
84 when the petition was filed.

85 (3) Notwithstanding subsection (2), a court shall not set
86 aside the paternity determination or child support order if the
87 male engaged in the following conduct after learning that he is
88 not the biological father of the child:

89 (a) Married the mother of the child while known as the
90 putative father in accordance with s. 742.091, Florida Statutes,
91 and voluntarily assumed the parental obligation and duty to pay
92 child support;

93 (b) Acknowledged his paternity of the child in a sworn
94 statement;

95 (c) Consented to be named as the child's biological father
96 on the child's birth certificate;

97 (d) Voluntarily promised in writing to support the child
98 and was required to support the child based on that promise;

99 (e) Received and disregarded written notice from any state
100 agency or any court directing him to submit to scientific
101 testing; or

102 (f) Signed a voluntary acknowledgment of paternity as
103 provided in s. 742.10(4), Florida Statutes.

104 (4) In the event the petitioner fails to make the
105 requisite showing required by this section, the court shall deny
106 the petition.

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107 (5) In the event relief is granted pursuant to this
108 section, relief shall be limited to the issues of prospective
109 child support payments and termination of parental rights,
110 custody, and visitation rights. The male's previous status as
111 father continues to be in existence until the order granting
112 relief is rendered. All previous lawful actions taken based on
113 reliance on that status are confirmed retroactively but not
114 prospectively. This section shall not be construed to create a
115 cause of action to recover child support that was previously
116 paid.

117 (6) The duty to pay child support and other legal
118 obligations for the child shall not be suspended while the
119 petition is pending except for good cause shown. However, the
120 court may order the child support to be held in the registry of
121 the court until final determination of paternity has been made.

122 (7) (a) In an action brought pursuant to this section, if
123 the scientific test results submitted in accordance with
124 paragraph (1) (b) are provided solely by the male ordered to pay
125 child support, the court on its own motion may, and on the
126 petition of any party shall, order the child and the male
127 ordered to pay child support to submit to applicable scientific
128 tests. The court shall provide that such scientific testing be
129 done no more than 30 days after the court issues its order.

130 (b) If the male ordered to pay child support willfully
131 fails to submit to scientific testing or if the mother or legal
132 guardian or custodian of the child willfully fails to submit the
133 child for testing, the court shall issue an order determining
134 the relief on the petition against the party so failing to

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135 submit to scientific testing. If a party shows good cause for
136 failing to submit to testing, such failure shall not be
137 considered willful. Nothing in this paragraph shall prevent the
138 child from reestablishing paternity under s. 742.10, Florida
139 Statutes.

140 (c) The party requesting applicable scientific testing
141 shall pay any fees charged for the testing. If the custodian of
142 the child is receiving services from an administrative agency in
143 its role as an agency providing enforcement of child support
144 orders, that agency shall pay the cost of the testing if it
145 requests the testing and may seek reimbursement for the fees
146 from the person against whom the court assesses the costs of the
147 action.

148 (8) If relief on a petition filed in accordance with this
149 section is granted, the clerk of the court shall, within 30 days
150 following final disposition, forward to the Office of Vital
151 Statistics of the Department of Health a certified copy of the
152 court order or a report of the proceedings upon a form to be
153 furnished by the department, together with sufficient
154 information to identify the original birth certificate and to
155 enable the department to prepare a new birth certificate. Upon
156 receipt of the certified copy or the report, the department
157 shall prepare and file a new birth certificate that deletes the
158 name of the male ordered to pay child support as the father of
159 the child. The certificate shall bear the same file number as
160 the original birth certificate. All other items not affected by
161 the order setting aside a determination of paternity shall be
162 copied as on the original certificate, including the date of

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163 registration and filing. If the child was born in a state other
164 than Florida, the clerk shall send a copy of the report or
165 decree to the appropriate birth registration authority of the
166 state where the child was born. If the relief on a petition
167 filed in accordance with this section is granted and the mother
168 or legal guardian or custodian requests that the court change
169 the child's surname, the court may change the child's surname.
170 If the child is a minor, the court shall consider whether it is
171 in the child's best interests to grant the request to change the
172 child's surname.

173 (9) The rendition of an order granting a petition filed
174 pursuant to this section shall not affect the legitimacy of a
175 child born during a lawful marriage.

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

179 (11) Nothing in this section precludes an individual from
180 seeking relief from a final judgment, decree, or order of
181 proceeding pursuant to Rule 1.540, Florida Rules of Civil
182 Procedure, or from challenging a paternity determination
183 pursuant to s. 742.10(4), Florida Statutes.

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