

1 A bill to be entitled

2 An act relating to paternity; permitting a petition to set  
3 aside a determination of paternity or terminate a child  
4 support obligation; specifying contents of the petition;  
5 providing standards upon which relief shall be granted;  
6 providing remedies; providing that child support  
7 obligations shall not be suspended while a petition is  
8 pending; providing for scientific testing; providing for  
9 the amendment of the child's birth certificate; providing  
10 for assessment of costs and attorney's fees; repealing  
11 Rule 1.540, Florida Rules of Civil Procedure, relating to  
12 relief from judgment, decrees, or orders; providing a  
13 contingent effective date.

14  
15 Be It Enacted by the Legislature of the State of Florida:

16  
17 Section 1. (1) This section establishes circumstances  
18 under which a male may disestablish paternity or terminate a  
19 child support obligation when the male is not the biological  
20 father of the child. To disestablish paternity or terminate a  
21 child support obligation, the male must file a petition in the  
22 circuit court having jurisdiction over the child support  
23 obligation. The petition must be served on the mother or other  
24 legal guardian or custodian of the child. If the child support  
25 obligation was determined administratively and has not been  
26 ratified by a court, then the petition must be filed in the  
27 circuit court in the county where the mother or legal guardian

28 | or custodian resides. Such a petition must be served on the  
29 | Department of Revenue and on the mother or legal guardian or  
30 | custodian. In the event that the mother or legal guardian or  
31 | custodian no longer resides in the state, the petition may be  
32 | filed in the circuit court in the county where the petitioner  
33 | resides. 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  
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.

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.

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  
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  
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 or from  
181 challenging a paternity determination as otherwise provided by  
182 law.

183 Section 2. Rule 1.540, Florida Rules of Civil Procedure,  
184 is repealed.

185 Section 3. This act shall take effect July 1, 2006, except  
186 that section 2 of this act shall take effect only if this act is

HB 221, Engrossed 1

2006

187 | passed by a two-thirds vote of the membership of each house of  
188 | the Legislature.