

Bill No. CS for SB 408

Barcode 243992

	CHAMBER ACTION	
<u>Senate</u>		<u>House</u>

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

Floor: WD/2R
05/02/2006 04:00 PM

.
. .
. .
. .
. .

Senator Lawson moved the following amendment:

Senate Amendment (with title amendment)

On page 4, lines 1 and 2, delete those lines

and insert:

Section 4. (1) This section establishes circumstances under which a male may disestablish paternity or terminate a child support obligation when the male is not the biological father of the child. To disestablish paternity or terminate a child support obligation, the male must file a petition in the circuit court having jurisdiction over the child support obligation. The petition must be served on the mother or other legal guardian or custodian of the child. If the child support obligation was determined administratively and has not been ratified by a court, then the petition must be filed in the circuit court where the mother or legal guardian or custodian resides. Such a petition must be served on the Department of Revenue and on the mother or legal guardian or custodian. If the mother or legal guardian or custodian no longer resides in the state, the petition may be filed in the circuit court in

Barcode 243992

1 the county where the petitioner resides. The petition must
2 include:

3 (a) An affidavit executed by the petitioner that newly
4 discovered evidence relating to the paternity of the child has
5 come to the petitioner's knowledge since the initial paternity
6 determination or establishment of a child support obligation.

7 (b) The results of scientific tests that are generally
8 acceptable within the scientific community to show a
9 probability of paternity, administered within 90 days prior to
10 the filing of such petition, which results indicate that the
11 male ordered to pay such child support cannot be the father of
12 the child for whom support is required, or an affidavit
13 executed by the petitioner stating that he did not have access
14 to the child to have scientific testing performed prior to the
15 filing of the petition. A male who suspects he is not the
16 father but does not have access to the child to have
17 scientific testing performed may file a petition requesting
18 the court to order the child to be tested.

19 (c) An affidavit executed by the petitioner stating
20 that the petitioner is current on all child support payments
21 for the child for whom relief is sought or that he has
22 substantially complied with his child support obligation for
23 the applicable child and that any delinquency in his child
24 support obligation for that child arose from his inability for
25 just cause to pay the delinquent child support when the
26 delinquent child support became due.

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

30 (a) Newly discovered evidence relating to the
31 paternity of the child has come to the petitioner's knowledge

Barcode 243992

1 since the initial paternity determination or establishment of
2 a child support obligation.

3 (b) The scientific test required in paragraph (1)(b)
4 was properly conducted.

5 (c) The male ordered to pay child support is current
6 on all child support payments for the applicable child or that
7 the male ordered to pay child support has substantially
8 complied with his child support obligation for the applicable
9 child and that any delinquency in his child support obligation
10 for that child arose from his inability for just cause to pay
11 the delinquent child support when the delinquent child support
12 became due.

13 (d) The male ordered to pay child support has not
14 adopted the child.

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

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

21 (g) The child was younger than 18 years of age when
22 the petition was filed.

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

27 1. Married the mother of the child while known as the
28 reputed father in accordance with s. 742.091, Florida
29 Statutes, and voluntarily assumed the parental obligation and
30 duty to pay child support;

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

Bill No. CS for SB 408

Barcode 243992

1 statement;

2 3. Consented to be named as the child's biological
3 father on the child's birth certificate;

4 4. Voluntarily promised in writing to support the
5 child and was required to support the child based on that
6 promise;

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

10 6. Signed a voluntary acknowledgment of paternity as
11 provided in s. 742.10(4), Florida Statutes.

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

15 (5) 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 retroactively but not
22 prospectively. This section shall not be construed to create a
23 cause of action to recover child support that was previously
24 paid.

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

31 (7)(a) In an action brought pursuant to this section,

Barcode 243992

1 if the scientific test results submitted in accordance with
 2 paragraph (1)(b) are provided solely by the male ordered to
 3 pay child support, the court on its own motion may, and on the
 4 petition of any party shall, order the child and the male
 5 ordered to pay child support to submit to applicable
 6 scientific tests. The court shall provide that such scientific
 7 testing be done no more than 30 days after the court issues
 8 its order.

9 (b) If the male ordered to pay child support willfully
 10 fails to submit to scientific testing or if the mother or
 11 legal guardian or custodian of the child willfully fails to
 12 submit the child for testing, the court shall issue an order
 13 determining the relief on the petition against the party so
 14 failing to submit to scientific testing. If a party shows good
 15 cause for failing to submit to testing, such failure shall not
 16 be considered willful. Nothing in this paragraph shall prevent
 17 the child from reestablishing paternity under s. 742.10,
 18 Florida Statutes.

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

27 (8) If the relief on a petition filed in accordance
 28 with this section is granted, the clerk of the court shall,
 29 within 30 days following final disposition, forward to the
 30 Office of Vital Statistics of the Department of Health a
 31 certified copy of the court order or a report of the

Bill No. CS for SB 408

Barcode 243992

1 proceedings upon a form to be furnished by the department,
 2 together with sufficient information to identify the original
 3 birth certificate and to enable the department to prepare a
 4 new birth certificate. Upon receipt of the certified copy or
 5 the report, the department shall prepare and file a new birth
 6 certificate that deletes the name of the male ordered to pay
 7 child support as the father of the child. The certificate
 8 shall bear the same file number as the original birth
 9 certificate. All other items not affected by the order setting
 10 aside a determination of paternity shall be copied as on the
 11 original certificate, including the date of registration and
 12 filing. If the child was born in a state other than Florida,
 13 the clerk shall send a copy of the report or decree to the
 14 appropriate birth registration authority of the state where
 15 the child was born. If the relief on a petition filed in
 16 accordance with this section is granted and the mother or
 17 legal guardian or custodian requests that the court change the
 18 child's surname, the court may change the child's surname. If
 19 the child is a minor, the court shall consider whether it is
 20 in the child's best interests to grant the request to change
 21 the child's surname.

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

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

28 (11) Nothing in this section precludes an individual
 29 from seeking relief from a final judgment, decree, order, or
 30 proceeding pursuant to Rule 1.540, Florida Rules of Civil
 31 Procedure, or from challenging a paternity determination

Bill No. CS for SB 408

Barcode 243992

1 pursuant to s. 742.10(4), Florida Statutes.

2 Section 5. Except for section 4 of this act, which
3 shall take effect July 1, 2006, this act shall take effect
4 upon becoming a law.

5
6

7 ===== T I T L E A M E N D M E N T =====

8 And the title is amended as follows:

9 On page 1, lines 21 and 22, delete those lines

10

11 and insert:

12 construction and applicability; permitting a
13 petition to set aside a determination of
14 paternity or terminate a child support
15 obligation; specifying contents of the
16 petition; providing standards upon which relief
17 shall be granted; providing remedies;
18 prohibiting the suspension of child support
19 obligations while a petition is pending;
20 providing for scientific testing; providing for
21 the amendment of the child's birth certificate;
22 providing for assessment of costs and
23 attorney's fees; providing effective dates.

24
25
26
27
28
29
30
31