

Bill No. SB 438

Barcode 320970

CHAMBER ACTION

Senate

House

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Comm: RCS  
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The Committee on Judiciary (Campbell) recommended the following **substitute for amendment** (415766):

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause

and insert:

Section 1. (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 court with continuing jurisdiction over the child support obligation. The petition must also 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 of the child resides. Such a petition must be served on the Department of Revenue and on the mother or other legal guardian or custodian. The petition must include:

Barcode 320970

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

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

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

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

28       (a) Newly discovered evidence relating to the  
 29 paternity of the child has come to the petitioner's knowledge  
 30 since the initial paternity determination or establishment of  
 31 a child support obligation.

Bill No. SB 438

Barcode 320970

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

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

11       (d) The male ordered to pay child support has not  
12 adopted the child.

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

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

19       (g) The child was less than 18 years old when the  
20 petition was filed.

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

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

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

31           3. Consented to be named as the child's biological

Bill No. SB 438

Barcode 320970

1 father on the child's birth certificate;

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

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

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

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

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

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

29 (7)(a) In an action brought pursuant to this section,  
30 if the scientific test results submitted in accordance with  
31 paragraph (1)(b) are provided solely by the male ordered to

Bill No. SB 438

Barcode 320970

1 pay child support, the court on its own motion may, and on the  
2 petition of any party shall, order the child and the male  
3 ordered to pay child support to submit to applicable  
4 scientific tests. The court shall provide that such scientific  
5 testing be done no more than 30 days after the court issues  
6 its order.

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

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

25 (8) If the relief on a petition filed in accordance  
26 with this section is granted, the clerk of the court shall,  
27 within 30 days following final disposition, forward to the  
28 Department of Health, Office of Vital Statistics, a certified  
29 copy of the court order or a report of the proceedings upon a  
30 form to be furnished by the department, together with  
31 sufficient information to identify the original birth

Bill No. SB 438

Barcode 320970

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

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

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

24       (11) Nothing in this section precludes an individual  
25 from seeking relief from a final judgment, decree, or order of  
26 proceeding pursuant to Rule 1.540, Florida Rules of Civil  
27 Procedure, or from challenging a paternity determination  
28 pursuant to section 742.10(4), Florida Statutes.

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

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Bill No. SB 438

Barcode 320970

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

2 And the title is amended as follows:

3           Delete everything before the enacting clause

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5 and insert:

6                           A bill to be entitled

7           An act relating to paternity; permitting a

8           petition to set aside a determination of

9           paternity or terminate a child support

10          obligation; specifying contents of the

11          petition; providing standards upon which relief

12          shall be granted; providing remedies; providing

13          that child support obligations shall not be

14          suspended while a petition is pending;

15          providing for scientific testing; providing for

16          the amendment of the child's birth certificate;

17          providing for assessment of costs and

18          attorney's fees; providing an effective date.

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