

Bill No. SB 438

Barcode 415766

CHAMBER ACTION

Senate

House

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The Committee on Judiciary (Campbell) recommended the following amendment:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause

and insert:

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

(a) An affidavit executed by the petitioner that newly discovered evidence has come to the petitioner's knowledge since establishment of the support obligation by judgment or operation of law which the petitioner was not previously aware of due to fraud or misrepresentation.

(b) The results of scientific tests that are generally

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1 acceptable within the scientific community to show a  
 2 probability of paternity, administered within 90 days prior to  
 3 the filing of such petition, which results indicate that the  
 4 male ordered to pay such child support cannot be the father of  
 5 the child for whom support is required or an affidavit  
 6 executed by the petitioner stating that he did not have access  
 7 to the child to have scientific testing performed prior to the  
 8 filing of the petition. A male who suspects he is not the  
 9 father but does not have access to the child to have genetic  
 10 testing or other applicable scientific testing performed may  
 11 file a petition requesting the court to order the child to be  
 12 tested.

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

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

24 (a) The genetic test required in paragraph (1)(b) was  
 25 properly conducted.

26 (b) The male ordered to pay child support is current  
 27 on all child support payments for the applicable child or that  
 28 the male ordered to pay child support has substantially  
 29 complied with his child support obligation for the applicable  
 30 child and that any delinquency in his child support obligation  
 31 for that child arose from his inability to pay the delinquent

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1 child support when the delinquent child support became due.

2 (c) The male ordered to pay child support has not  
3 adopted the child.

4 (d) The child was not conceived by artificial  
5 insemination while the male ordered to pay child support and  
6 the child's mother were in wedlock.

7 (e) The male ordered to pay child support did not act  
8 to prevent the biological father of the child from asserting  
9 his paternal rights with respect to the child.

10 (f) The male ordered to pay child support with  
11 knowledge that he is not the biological father of the child  
12 has not:

13 1. Married the mother of the child and voluntarily  
14 assumed the parental obligation and duty to pay child support;

15 2. Acknowledged his paternity of the child in a sworn  
16 statement;

17 3. Been named as the child's biological father on the  
18 child's birth certificate with his consent;

19 4. Been required to support the child because of a  
20 voluntary written promise;

21 5. Received written notice from any state agency or  
22 any court directing him to submit to genetic testing which he  
23 disregarded; or

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

26 (3) In the event the petitioner fails to make the  
27 requisite showing required by this section, the court shall  
28 deny the petition.

29 (4) In the event relief is granted pursuant to this  
30 section, relief shall be limited to the issues of prospective  
31 child support payments and termination of parental rights,

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1 custody, and visitation rights. The male's previous status as  
 2 father continues to be in existence until the order granting  
 3 relief is rendered. All previous lawful actions taken based on  
 4 reliance on that status are confirmed retroactively but not  
 5 prospectively. This section shall not be construed to create a  
 6 cause of action to recover child support that was previously  
 7 paid.

8 (5) The duty to pay child support and other legal  
 9 obligations for the child shall not be suspended while the  
 10 petition is pending except for good cause shown. However, the  
 11 court may order the child support to be held in the registry  
 12 of the court until final determination of paternity has been  
 13 made.

14 (6)(a) In an action brought pursuant to this section,  
 15 if the genetic test results, or other scientific test results,  
 16 submitted in accordance with paragraph (1)(b) are provided  
 17 solely by the male ordered to pay child support, the court on  
 18 its own motion may, and on the petition of any party shall,  
 19 order the child's mother, the child, and the male ordered to  
 20 pay child support to submit to genetic tests or other  
 21 applicable scientific tests. The court shall provide that such  
 22 genetic testing or other applicable scientific testing be done  
 23 no more than 30 days after the court issues its order.

24 (b) If the mother of the child or the male ordered to  
 25 pay child support willfully fails to submit to genetic testing  
 26 or other applicable scientific testing or if either such party  
 27 is the custodian of the child and willfully fails to submit  
 28 the child for testing, the court shall issue an order  
 29 determining the relief on the petition against the party so  
 30 failing to submit to genetic testing or other applicable  
 31 scientific testing. If a party shows good cause for failing to

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1 submit to genetic testing or other applicable scientific  
2 testing, such failure shall not be considered willful.

3 (c) The party requesting genetic testing or other  
4 applicable scientific testing shall pay any fees charged for  
5 the tests. If the custodian of the child is receiving services  
6 from an administrative agency in its role as an agency  
7 providing enforcement of child support orders, that agency  
8 shall pay the cost of genetic testing if it requests the test  
9 and may seek reimbursement for the fees from the person  
10 against whom the court assesses the costs of the action.

11 (7) If the relief on a petition filed in accordance  
12 with this section is granted, the clerk of the court shall,  
13 within 30 days following final disposition, forward to the  
14 Department of Health, Office of Vital Statistics, a certified  
15 copy of the court order or a report of the proceedings upon a  
16 form to be furnished by the department, together with  
17 sufficient information to identify the original birth  
18 certificate and to enable the department to prepare a new  
19 birth certificate. Upon receipt of the certified copy or the  
20 report, the department shall prepare and file a new birth  
21 certificate that deletes the name of the male ordered to pay  
22 child support as the father of the child. The certificate  
23 shall bear the same file number as the original birth  
24 certificate. All other items not affected by the order setting  
25 aside a determination of paternity shall be copied as on the  
26 original certificate, including the date of registration and  
27 filing. If the child was born in a state other than Florida,  
28 the clerk shall send a copy of the report or decree to the  
29 appropriate birth registration authority of the state where  
30 the child was born. If the relief on a petition filed in  
31 accordance with this section is granted, the court may

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1 consider a written request from the mother of the child to  
 2 change the child's surname. If the child is a minor, the court  
 3 shall consider whether it is in the child's best interests to  
 4 grant the mother's request.

5 (8) The rendition of an order granting a petition  
 6 filed pursuant to this section shall not affect the legitimacy  
 7 of a child born during a lawful marriage.

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

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

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

15 And the title is amended as follows:

16 Delete everything before the enacting clause

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 18

and insert:

19 A bill to be entitled  
 20 An act relating to paternity; permitting a  
 21 sworn petition to set aside a determination of  
 22 paternity prior to the child's 18th birthday;  
 23 specifying contents of the petition; providing  
 24 standards upon which relief shall be granted;  
 25 providing remedies; providing that child  
 26 support obligations shall not be suspended  
 27 while a petition is pending; providing for  
 28 genetic testing or other appropriate scientific  
 29 testing; providing for the amendment of the  
 30 child's birth certificate; providing for  
 31 assessment of costs and attorney's fees;

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1 providing an effective date.

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