

Bill No. SB 438

Barcode 801258

CHAMBER ACTION

Senate

House

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Comm: WD  
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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. The petition must include:

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

(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  
10 scientific testing performed may file a petition requesting  
11 the court to order the child to be tested.

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

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

23 (a) The scientific test required in paragraph (1)(b)  
24 was properly conducted.

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

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1 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 child was less than 18 years old when the  
11 petition was filed.

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

16 1. Married the mother of the child while known as the  
17 reputed father in accordance with section 742.091, Florida  
18 Statutes, and voluntarily assumed the parental obligation and  
19 duty to pay child support;

20 2. Acknowledged his paternity of the child in a sworn  
21 statement;

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

24 4. Voluntarily promised in writing to support the  
25 child and was required to support the child based on that  
26 promise;

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

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

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1       (4) In the event the petitioner fails to make the  
2 requisite showing required by this section, the court shall  
3 deny the petition.

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

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

20       (7)(a) In an action brought pursuant to this section,  
21 if the scientific test results submitted in accordance with  
22 paragraph (1)(b) are provided solely by the male ordered to  
23 pay child support, the court on its own motion may, and on the  
24 petition of any party shall, order the child and the male  
25 ordered to pay child support to submit to applicable  
26 scientific tests. The court shall provide that such scientific  
27 testing be done no more than 30 days after the court issues  
28 its order.

29       (b) If the male ordered to pay child support willfully  
30 fails to submit to scientific testing or if the mother is the  
31 custodian of the child and willfully fails to submit the child

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1 for testing, the court shall issue an order determining the  
 2 relief on the petition against the party so failing to submit  
 3 to scientific testing. If a party shows good cause for failing  
 4 to submit to testing, such failure shall not be considered  
 5 willful. Nothing in this paragraph shall prevent the child  
 6 from reestablishing paternity under section 742.10, Florida  
 7 Statutes.

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

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

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1 filing. If the child was born in a state other than Florida,  
 2 the clerk shall send a copy of the report or decree to the  
 3 appropriate birth registration authority of the state where  
 4 the child was born. If the relief on a petition filed in  
 5 accordance with this section is granted, the court may change  
 6 the child's surname. If the child is a minor, the court shall  
 7 consider whether it is in the child's best interests to grant  
 8 the mother's request.

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

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

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

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

19 And the title is amended as follows:

20           Delete everything before the enacting clause

21  
 22 and insert:

23           A bill to A bill to be entitled  
 24           An act relating to paternity; permitting a  
 25           petition to set aside a determination of  
 26           paternity or terminate a child support  
 27           obligation; specifying contents of the  
 28           petition; providing standards upon which relief  
 29           shall be granted; providing remedies; providing  
 30           that child support obligations shall not be  
 31           suspended while a petition is pending;

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1 providing for scientific testing; providing for  
2 the amendment of the child's birth certificate;  
3 providing for assessment of costs and  
4 attorney's fees; providing an effective date.  
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