

By Senator Lawson

6-509-06

See HB 221

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A bill to be entitled

An act relating to paternity; permitting a sworn petition to set aside a determination of paternity prior to the child's 18th birthday; specifying contents of the petition; providing standards upon which relief shall be granted; providing remedies; providing that child support obligations shall not be suspended while a petition is pending; providing for genetic testing; providing for assessment of costs and attorney's fees; providing an effective date.

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

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 made 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 the entry of judgment.

(b) The results of scientific tests that are generally acceptable within the scientific community to show a probability of paternity, administered within 90 days prior to the filing of such petition, which results indicate that the male ordered to pay such child support cannot be the father of

1 the child for whom support is required. A male who suspects he
2 is not the father but does not have access to the child to
3 have genetic testing performed may file a petition requesting
4 the court to order the child to be tested.

5 (c) An affidavit executed by the petitioner stating
6 that the petitioner is current on all child support payments
7 for the child for whom relief is sought.

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

11 (a) The genetic test required in paragraph (1)(b) was
12 properly conducted.

13 (b) The male ordered to pay child support is current
14 on all child support payments.

15 (c) The male ordered to pay child support has not
16 adopted the child.

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

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

23 (f) The male ordered to pay child support with
24 knowledge that he is not the biological father of the child
25 has not:

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

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

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

1 4. Been required to support the child because of a
2 voluntary written promise;

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

6 6. Signed a voluntary acknowledgment of paternity as
7 provided in s. 742.10(4), Florida Statutes; or

8 7. Proclaimed himself to be the child's biological
9 father.

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

13 (4) 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. This section shall not
20 be construed to create a cause of action to recover child
21 support that was previously paid.

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

28 (6)(a) In an action brought pursuant to this section,
29 if the genetic test results submitted in accordance with
30 paragraph (1)(b) are provided solely by the male ordered to
31 pay child support, the court on its own motion may, and on the

1 petition of any party shall, order the child's mother, the
2 child, and the male ordered to pay child support to submit to
3 genetic tests. The court shall provide that such genetic
4 testing be done no more than 30 days after the court issues
5 its order.

6 (b) If the mother of the child or the male ordered to
7 pay child support willfully fails to submit to genetic testing
8 or if either such party is the custodian of the child and
9 willfully fails to submit the child for testing, the court
10 shall issue an order determining the relief on the petition
11 against the party so failing to submit to genetic testing. If
12 a party shows good cause for failing to submit to genetic
13 testing, such failure shall not be considered willful.

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

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

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