

By the Committee on Judiciary; and Senator Lawson

590-1747-06

1                                    A bill to be entitled  
2                    An act relating to paternity; permitting a  
3                    petition to set aside a determination of  
4                    paternity or terminate a child support  
5                    obligation; specifying contents of the  
6                    petition; providing standards upon which relief  
7                    shall be granted; providing remedies;  
8                    prohibiting the suspension of child support  
9                    obligations while a petition is pending;  
10                  providing for scientific testing; providing for  
11                  the amendment of the child's birth certificate;  
12                  providing for assessment of costs and  
13                  attorney's fees; providing an effective date.

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

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17                  Section 1. (1) This section establishes circumstances  
18 under which a male may disestablish paternity or terminate a  
19 child support obligation when the male is not the biological  
20 father of the child. To disestablish paternity or terminate a  
21 child support obligation, the male must file a petition in the  
22 court with continuing jurisdiction over the child support  
23 obligation. The petition must also be served on the mother or  
24 other legal guardian or custodian of the child. If the child  
25 support obligation was determined administratively and has not  
26 been ratified by a court, then the petition must be filed in  
27 the circuit court where the mother or legal guardian or  
28 custodian of the child resides. Such a petition must be served  
29 on the Department of Revenue and on the mother or other legal  
30 guardian or custodian. The petition must include:

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.

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 younger than 18 years of age when  
20 the 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 s. 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;

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

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

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

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

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

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

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

30           (7)(a) In an action brought pursuant to this section,  
31 if the scientific test results submitted in accordance with

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

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

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

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

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

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

22 (10) 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 (11) Nothing in this section precludes an individual  
26 from seeking relief from a final judgment, decree, or order of  
27 proceeding pursuant to Rule 1.540, Florida Rules of Civil  
28 Procedure, or from challenging a paternity determination  
29 pursuant to s. 742.10(4), Florida Statutes.

30 Section 2. This act shall take effect July 1, 2006.  
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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
COMMITTEE SUBSTITUTE FOR  
Senate Bill 438

The committee substitute differs from the underlying bill in that it:

- Permits a male to petition for paternity disestablishment if he is unable to pay his child support obligation for just cause;
- Clarifies that a male who engages in certain paternal conduct while knowing he is not the father of a child cannot petition for paternity disestablishment;
- Permits a child to reestablish paternity if paternity is disestablished due to the mother's failure to submit the child to paternity testing;
- Permits scientific paternity tests rather than genetic paternity tests exclusively;
- Provides for the revision of a child's birth certificate and for the change of a child's surname when paternity is disestablished;
- Provides that paternity disestablishment does not affect the legitimacy of a child born during wedlock; and
- Provides that the measure does not foreclose options to disestablish paternity under the Rules of Civil Procedure or s. 742.10, F.S.