

By the Committees on Children and Families; Judiciary; and  
Senator Lawson

586-1800-06

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.

14

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

16

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 circuit court having jurisdiction over the child support

23 obligation. The petition must be served on the mother or other

24 legal guardian or custodian of the child. If the child support

25 obligation was determined administratively and has not been

26 ratified by a court, then the petition must be filed in the

27 circuit court where the mother or legal guardian or custodian

28 resides. Such a petition must be served on the Department of

29 Revenue and on the mother or legal guardian or custodian. If

30 the mother or legal guardian or custodian no longer resides in

31 the state, the petition may be filed in the circuit court in

1 the county where the petitioner resides. The petition must  
2 include:

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

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

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

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

30 (a) Newly discovered evidence relating to the  
31 paternity of the child has come to the petitioner's knowledge

1 since the initial paternity determination or establishment of  
2 a child support obligation.

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

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

13 (d) The male ordered to pay child support has not  
14 adopted the child.

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

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

21 (g) The child was younger than 18 years of age when  
22 the petition was filed.

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

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

31

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

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

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

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

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

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

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

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

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

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

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

28           (8) If the relief on a petition filed in accordance  
29 with this section is granted, the clerk of the court shall,  
30 within 30 days following final disposition, forward to the  
31 Office of Vital Statistics of the Department of Health a

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

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

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

29 (11) Nothing in this section precludes an individual  
30 from seeking relief from a final judgment, decree, order, or  
31 proceeding pursuant to Rule 1.540, Florida Rules of Civil

1 Procedure, or from challenging a paternity determination  
2 pursuant to s. 742.10(4), Florida Statutes.

3 Section 2. This act shall take effect July 1, 2006.  
4

5 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
6 COMMITTEE SUBSTITUTE FOR  
7 CS for SB 438

8 Clarifies that the petition to disestablish paternity may be  
9 filed in any circuit court with jurisdiction over the child  
support obligation.

10 Authorizes filing the petition in the circuit court in the  
11 county where the petitioner resides in the state when the  
mother or legal guardian no longer resides in the state.

12 Adds legal guardian to mother as a person who might willfully  
13 fail to submit the child for DNA testing.

14 Clarifies that the child's name may be changed after the  
courts set aside paternity determination.

15 Conforms bill to Rule 1.540, Florida Rules of Civil Procedure,  
16 relating to relief from a final judgment, decree, order, or  
proceeding.

17

18

19

20

21

22

23

24

25

26

27

28

29

30

31