

Amendment No. (for drafter's use only)

CHAMBER ACTION

Senate

House

1 Representative(s) Richardson offered the following:

2
3 **Amendment (with title amendment)**

4 Remove line(s) 86 and insert:

5 Section 4. (1) This section establishes circumstances
6 under which a male may disestablish paternity or terminate a
7 child support obligation when the male is not the biological
8 father of the child. To disestablish paternity or terminate a
9 child support obligation, the male must file a petition in the
10 circuit court having jurisdiction over the child support
11 obligation. The petition must be served on the mother or other
12 legal guardian or custodian of the child. If the child support
13 obligation was determined administratively and has not been
14 ratified by a court, then the petition must be filed in the
15 circuit court in the county where the mother or legal guardian
16 or custodian resides. Such a petition must be served on the
17 Department of Revenue and on the mother or legal guardian or
562745

4/25/2006 10:13:19 AM

Amendment No. (for drafter's use only)

18 custodian. In the event that the mother or legal guardian or
19 custodian no longer resides in the state, the petition may be
20 filed in the circuit court in the county where the petitioner
21 resides. The petition must include:

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

26 (b) The results of scientific tests that are generally
27 acceptable within the scientific community to show a probability
28 of paternity, administered within 90 days prior to the filing of
29 such petition, which results indicate that the male ordered to
30 pay such child support cannot be the father of the child for
31 whom support is required or an affidavit executed by the
32 petitioner stating that he did not have access to the child to
33 have scientific testing performed prior to the filing of the
34 petition. A male who suspects he is not the father but does not
35 have access to the child to have scientific testing performed
36 may file a petition requesting the court to order the child to
37 be tested.

38 (c) An affidavit executed by the petitioner stating that
39 the petitioner is current on all child support payments for the
40 child for whom relief is sought or that he has substantially
41 complied with his child support obligation for the applicable
42 child and that any delinquency in his child support obligation
43 for that child arose from his inability for just cause to pay
44 the delinquent child support when the delinquent child support
45 became due.

562745

4/25/2006 10:13:19 AM

Amendment No. (for drafter's use only)

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

49 (a) Newly discovered evidence relating to the paternity of
50 the child has come to the petitioner's knowledge since the
51 initial paternity determination or establishment of a child
52 support obligation.

53 (b) The scientific test required in paragraph (1)(b) was
54 properly conducted.

55 (c) The male ordered to pay child support is current on
56 all child support payments for the applicable child or that the
57 male ordered to pay child support has substantially complied
58 with his child support obligation for the applicable child and
59 that any delinquency in his child support obligation for that
60 child arose from his inability for just cause to pay the
61 delinquent child support when the delinquent child support
62 became due.

63 (d) The male ordered to pay child support has not adopted
64 the child.

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

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

71 (g) The child had not yet reached his or her 18th birthday
72 when the petition was filed.

73 (3) Notwithstanding subsection (2), a court shall not set
74 aside the paternity determination or child support order if the
562745

4/25/2006 10:13:19 AM

Amendment No. (for drafter's use only)

75 male engaged in the following conduct after learning that he is
76 not the biological father of the child:

77 (a) Married the mother of the child while known as the
78 putative father in accordance with s. 742.091, Florida Statutes,
79 and voluntarily assumed the parental obligation and duty to pay
80 child support;

81 (b) Acknowledged his paternity of the child in a sworn
82 statement;

83 (c) Consented to be named as the child's biological father
84 on the child's birth certificate;

85 (d) Voluntarily promised in writing to support the child
86 and was required to support the child based on that promise;

87 (e) Received and disregarded written notice from any state
88 agency or any court directing him to submit to scientific
89 testing; or

90 (f) Signed a voluntary acknowledgment of paternity as
91 provided in s. 742.10(4), Florida Statutes.

92 (4) In the event the petitioner fails to make the
93 requisite showing required by this section, the court shall deny
94 the petition.

95 (5) In the event relief is granted pursuant to this
96 section, relief shall be limited to the issues of prospective
97 child support payments and termination of parental rights,
98 custody, and visitation rights. The male's previous status as
99 father continues to be in existence until the order granting
100 relief is rendered. All previous lawful actions taken based on
101 reliance on that status are confirmed retroactively but not
102 prospectively. This section shall not be construed to create a

562745

4/25/2006 10:13:19 AM

Amendment No. (for drafter's use only)

103 cause of action to recover child support that was previously
104 paid.

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

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

118 (b) If the male ordered to pay child support willfully
119 fails to submit to scientific testing or if the mother or legal
120 guardian or custodian of the child willfully fails to submit the
121 child for testing, the court shall issue an order determining
122 the relief on the petition against the party so failing to
123 submit to scientific testing. If a party shows good cause for
124 failing to submit to testing, such failure shall not be
125 considered willful. Nothing in this paragraph shall prevent the
126 child from reestablishing paternity under s. 742.10, Florida
127 Statutes.

128 (c) The party requesting applicable scientific testing
129 shall pay any fees charged for the testing. If the custodian of
130 the child is receiving services from an administrative agency in
131 its role as an agency providing enforcement of child support

562745

4/25/2006 10:13:19 AM

Amendment No. (for drafter's use only)

132 orders, that agency shall pay the cost of the testing if it
133 requests the testing and may seek reimbursement for the fees
134 from the person against whom the court assesses the costs of the
135 action.

136 (8) If relief on a petition filed in accordance with this
137 section is granted, the clerk of the court shall, within 30 days
138 following final disposition, forward to the Office of Vital
139 Statistics of the Department of Health a certified copy of the
140 court order or a report of the proceedings upon a form to be
141 furnished by the department, together with sufficient
142 information to identify the original birth certificate and to
143 enable the department to prepare a new birth certificate. Upon
144 receipt of the certified copy or the report, the department
145 shall prepare and file a new birth certificate that deletes the
146 name of the male ordered to pay child support as the father of
147 the child. The certificate shall bear the same file number as
148 the original birth certificate. All other items not affected by
149 the order setting aside a determination of paternity shall be
150 copied as on the original certificate, including the date of
151 registration and filing. If the child was born in a state other
152 than Florida, the clerk shall send a copy of the report or
153 decree to the appropriate birth registration authority of the
154 state where the child was born. If the relief on a petition
155 filed in accordance with this section is granted and the mother
156 or legal guardian or custodian requests that the court change
157 the child's surname, the court may change the child's surname.
158 If the child is a minor, the court shall consider whether it is
159 in the child's best interests to grant the request to change the
160 child's surname.

562745

4/25/2006 10:13:19 AM

Amendment No. (for drafter's use only)

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

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

167 (11) Nothing in this section precludes an individual from
168 seeking relief from a final judgment, decree, or order or from
169 challenging a paternity determination as otherwise provided by
170 law.

171 Section 5. Rule 1.540, Florida Rules of Civil Procedure,
172 is repealed.

173 Section 6. This act shall take effect upon becoming a law,
174 except that section 5 of this act shall take effect July 1,
175 2006, only if this act is passed by a two-thirds vote of the
176 membership of each house of the Legislature.

177
178 ===== T I T L E A M E N D M E N T =====

179 Remove line(s) 2-17 and insert:
180 An act relating to parental rights; amending s. 63.054, F.S.;
181 requiring a petitioner in a proceeding for termination of
182 parental rights to provide notice to the Office of Vital
183 Statistics of the Department of Health; prohibiting the office
184 from recording a claim of paternity after the date that a
185 termination of parental rights is filed; requiring the
186 department to remove a registrant's name from the Florida
187 Putative Father Registry upon a finding that the registrant has
188 no parental rights; amending s. 63.062, F.S.; modifying consent
189 required for adoption; amending s. 63.182, F.S.; providing that
562745

4/25/2006 10:13:19 AM

Amendment No. (for drafter's use only)

190 the interest that entitles a person to notice of an adoption
191 must be direct, financial, and immediate; providing an
192 exception; providing that a showing of an indirect,
193 inconsequential, or contingent interest is wholly inadequate;
194 providing construction and applicability; permitting a petition
195 to set aside a determination of paternity or terminate a child
196 support obligation; specifying contents of the petition;
197 providing standards upon which relief shall be granted;
198 providing remedies; providing that child support obligations
199 shall not be suspended while a petition is pending; providing
200 for scientific testing; providing for the amendment of the
201 child's birth certificate; providing for assessment of costs and
202 attorney's fees; repealing Rule 1.540, Florida Rules of Civil
203 Procedure, relating to relief from judgment, decrees, or orders;
204 providing a contingent effective date.