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HB 7151, Engrossed 1

2006 Legislature

1 A bill to be entitled

2 An act relating to the welfare of children; permitting a
3 petition to set aside a determination of paternity or
4 terminate a child support obligation; specifying contents
5 of the petition; providing standards upon which relief
6 shall be granted; providing remedies; prohibiting the
7 suspension of child support obligations while a petition
8 is pending; providing for scientific testing; providing
9 for the amendment of the child's birth certificate;
10 providing for assessment of costs and attorney's fees;
11 amending s. 63.054, F.S.; requiring a petitioner in a
12 proceeding for termination of parental rights to provide
13 notice to the Office of Vital Statistics of the Department
14 of Health; prohibiting the office from recording a claim
15 of paternity after the date that a termination of parental
16 rights is filed; requiring the department to remove a
17 registrant's name from the Florida Putative Father
18 Registry upon a finding that the registrant has no
19 parental rights; amending s. 63.062, F.S.; modifying
20 consent required for adoption; amending s. 63.182, F.S.;
21 providing that the interest that entitles a person to
22 notice of an adoption must be direct, financial, and
23 immediate; providing an exception; providing that a
24 showing of an indirect, inconsequential, or contingent
25 interest is wholly inadequate; providing construction and
26 applicability; providing an effective date.

27
28 Be It Enacted by the Legislature of the State of Florida:

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30 Section 1. (1) This section establishes circumstances
31 under which a male may disestablish paternity or terminate a
32 child support obligation when the male is not the biological
33 father of the child. To disestablish paternity or terminate a
34 child support obligation, the male must file a petition in the
35 circuit court having jurisdiction over the child support
36 obligation. The petition must be served on the mother or other
37 legal guardian or custodian of the child. If the child support
38 obligation was determined administratively and has not been
39 ratified by a court, then the petition must be filed in the
40 circuit court where the mother or legal guardian or custodian
41 resides. Such a petition must be served on the Department of
42 Revenue and on the mother or legal guardian or custodian. If the
43 mother or legal guardian or custodian no longer resides in the
44 state, the petition may be filed in the circuit court in the
45 county where the petitioner resides. The petition must include:
46 (a) An affidavit executed by the petitioner that newly
47 discovered evidence relating to the paternity of the child has
48 come to the petitioner's knowledge since the initial paternity
49 determination or establishment of a child support obligation.
50 (b) The results of scientific tests that are generally
51 acceptable within the scientific community to show a probability
52 of paternity, administered within 90 days prior to the filing of
53 such petition, which results indicate that the male ordered to
54 pay such child support cannot be the father of the child for
55 whom support is required, or an affidavit executed by the
56 petitioner stating that he did not have access to the child to

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57 have scientific testing performed prior to the filing of the
58 petition. A male who suspects he is not the father but does not
59 have access to the child to have scientific testing performed
60 may file a petition requesting the court to order the child to
61 be tested.

62 (c) An affidavit executed by the petitioner stating that
63 the petitioner is current on all child support payments for the
64 child for whom relief is sought or that he has substantially
65 complied with his child support obligation for the applicable
66 child and that any delinquency in his child support obligation
67 for that child arose from his inability for just cause to pay
68 the delinquent child support when the delinquent child support
69 became due.

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

73 (a) Newly discovered evidence relating to the paternity of
74 the child has come to the petitioner's knowledge since the
75 initial paternity determination or establishment of a child
76 support obligation.

77 (b) The scientific test required in paragraph (1)(b) was
78 properly conducted.

79 (c) The male ordered to pay child support is current on
80 all child support payments for the applicable child or that the
81 male ordered to pay child support has substantially complied
82 with his child support obligation for the applicable child and
83 that any delinquency in his child support obligation for that
84 child arose from his inability for just cause to pay the

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85 delinquent child support when the delinquent child support
 86 became due.

87 (d) The male ordered to pay child support has not adopted
 88 the child.

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

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

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

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

101 1. Married the mother of the child while known as the
 102 reputed father in accordance with s. 742.091, Florida Statutes,
 103 and voluntarily assumed the parental obligation and duty to pay
 104 child support;

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

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

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

111 5. Received written notice from any state agency or any
 112 court directing him to submit to scientific testing which he

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113 disregarded; or
 114 6. Signed a voluntary acknowledgment of paternity as
 115 provided in s. 742.10(4), Florida Statutes.
 116 (4) In the event the petitioner fails to make the
 117 requisite showing required by this section, the court shall deny
 118 the petition.
 119 (5) In the event relief is granted pursuant to this
 120 section, relief shall be limited to the issues of prospective
 121 child support payments and termination of parental rights,
 122 custody, and visitation rights. The male's previous status as
 123 father continues to be in existence until the order granting
 124 relief is rendered. All previous lawful actions taken based on
 125 reliance on that status are confirmed retroactively but not
 126 prospectively. This section shall not be construed to create a
 127 cause of action to recover child support that was previously
 128 paid.
 129 (6) The duty to pay child support and other legal
 130 obligations for the child shall not be suspended while the
 131 petition is pending except for good cause shown. However, the
 132 court may order the child support to be held in the registry of
 133 the court until final determination of paternity has been made.
 134 (7) (a) In an action brought pursuant to this section, if
 135 the scientific test results submitted in accordance with
 136 paragraph (1) (b) are provided solely by the male ordered to pay
 137 child support, the court on its own motion may, and on the
 138 petition of any party shall, order the child and the male
 139 ordered to pay child support to submit to applicable scientific
 140 tests. The court shall provide that such scientific testing be

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141 done no more than 30 days after the court issues its order.

142 (b) If the male ordered to pay child support willfully
 143 fails to submit to scientific testing or if the mother or legal
 144 guardian or custodian of the child willfully fails to submit the
 145 child for testing, the court shall issue an order determining
 146 the relief on the petition against the party so failing to
 147 submit to scientific testing. If a party shows good cause for
 148 failing to submit to testing, such failure shall not be
 149 considered willful. Nothing in this paragraph shall prevent the
 150 child from reestablishing paternity under s. 742.10, Florida
 151 Statutes.

152 (c) The party requesting applicable scientific testing
 153 shall pay any fees charged for the tests. If the custodian of
 154 the child is receiving services from an administrative agency in
 155 its role as an agency providing enforcement of child support
 156 orders, that agency shall pay the cost of the testing if it
 157 requests the test and may seek reimbursement for the fees from
 158 the person against whom the court assesses the costs of the
 159 action.

160 (8) If the relief on a petition filed in accordance with
 161 this section is granted, the clerk of the court shall, within 30
 162 days following final disposition, forward to the Office of Vital
 163 Statistics of the Department of Health a certified copy of the
 164 court order or a report of the proceedings upon a form to be
 165 furnished by the department, together with sufficient
 166 information to identify the original birth certificate and to
 167 enable the department to prepare a new birth certificate. Upon
 168 receipt of the certified copy or the report, the department

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169 shall prepare and file a new birth certificate that deletes the
 170 name of the male ordered to pay child support as the father of
 171 the child. The certificate shall bear the same file number as
 172 the original birth certificate. All other items not affected by
 173 the order setting aside a determination of paternity shall be
 174 copied as on the original certificate, including the date of
 175 registration and filing. If the child was born in a state other
 176 than Florida, the clerk shall send a copy of the report or
 177 decree to the appropriate birth registration authority of the
 178 state where the child was born. If the relief on a petition
 179 filed in accordance with this section is granted and the mother
 180 or legal guardian or custodian requests that the court change
 181 the child's surname, the court may change the child's surname.
 182 If the child is a minor, the court shall consider whether it is
 183 in the child's best interests to grant the request to change the
 184 child's surname.

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

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

191 (11) Nothing in this section precludes an individual from
 192 seeking relief from a final judgment, decree, order, or
 193 proceeding pursuant to Rule 1.540, Florida Rules of Civil
 194 Procedure, or from challenging a paternity determination
 195 pursuant to s. 742.10(4), Florida Statutes.

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196 Section 2. Subsections (1) and (5) of section 63.054,
 197 Florida Statutes, are amended to read:

198 63.054 Actions required by an unmarried biological father
 199 to establish parental rights; Florida Putative Father
 200 Registry.--

201 (1) In order to preserve the right to notice and consent
 202 to an adoption under this chapter, an unmarried biological
 203 father must, as the "registrant," file a notarized claim of
 204 paternity form with the Florida Putative Father Registry
 205 maintained by the Office of Vital Statistics of the Department
 206 of Health and shall include therein confirmation of his
 207 willingness and intent to support the child for whom paternity
 208 is claimed in accordance with state law. The claim of paternity
 209 may be filed at any time prior to the child's birth, but a claim
 210 of paternity may not be filed after the date a petition is filed
 211 for termination of parental rights. In each proceeding for
 212 termination of parental rights, the petitioner shall submit to
 213 the Office of Vital Statistics of the Department of Health a
 214 copy of the petition for termination of parental rights. The
 215 Office of Vital Statistics of the Department of Health shall not
 216 record a claim of paternity after the date that a petition for
 217 termination of parental rights is filed.

218 (5) The registrant may, at any time prior to the birth of
 219 the child for whom paternity is claimed, execute a notarized
 220 written revocation of the claim of paternity previously filed
 221 with the Florida Putative Father Registry, and upon receipt of
 222 such revocation, the claim of paternity shall be deemed null and
 223 void. If a court determines that a registrant is not the father

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224 of the minor or has no parental rights, the court shall order
 225 the Department of Health to remove the registrant's name from
 226 the registry.

227 Section 3. Subsection (4) of section 63.062, Florida
 228 Statutes, is amended to read:

229 63.062 Persons required to consent to adoption; affidavit
 230 of nonpaternity; waiver of venue.--

231 (4) Any person whose consent is required under paragraph
 232 (1)(b), or any other man, ~~paragraphs (1)(e) (e)~~ may execute an
 233 irrevocable affidavit of nonpaternity in lieu of a consent under
 234 this section and by doing so waives notice to all court
 235 proceedings after the date of execution. An affidavit of
 236 nonpaternity must be executed as provided in s. 63.082. The
 237 affidavit of nonpaternity may be executed prior to the birth of
 238 the child. The person executing the affidavit must receive
 239 disclosure under s. 63.085 prior to signing the affidavit.

240 Section 4. Section 63.182, Florida Statutes, is amended to
 241 read:

242 63.182 Statute of repose.--

243 (1) Notwithstanding s. 95.031 or s. 95.11 or any other
 244 statute, an action or proceeding of any kind to vacate, set
 245 aside, or otherwise nullify a judgment of adoption or an
 246 underlying judgment terminating parental rights on any ground
 247 may not be filed more than 1 year after entry of the judgment
 248 terminating parental rights.

249 (2)(a) Except for the specific persons expressly entitled
 250 to be given notice of an adoption in accordance with this
 251 chapter, the interest that entitles a person to notice of an

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252 adoption must be direct, financial, and immediate and the person
253 must show that he or she will gain or lose by the direct legal
254 operation and effect of the judgment. A showing of an indirect,
255 inconsequential, or contingent interest is wholly inadequate and
256 a person with this indirect interest lacks standing to set aside
257 a judgment of adoption.

258 (b) This subsection is remedial and shall apply to all
259 adoptions, including those in which a judgment of adoption has
260 already been entered.

261 Section 5. This act shall take effect upon becoming a law.