

1 A bill to be entitled
 2 An act relating to child support; amending s. 742.18,
 3 F.S.; eliminating the requirement for a reputed father
 4 seeking to disestablish paternity and terminate a child
 5 support obligation to affirm that he is current on his
 6 child support obligation or that any delinquency is based
 7 on inability to pay; providing for relief from past due
 8 child support payments; revising provision relating to
 9 naming the father on a child's birth certificate to
 10 conform to procedures under ch. 382, F.S.; providing an
 11 effective date.

12
 13 Be It Enacted by the Legislature of the State of Florida:

14
 15 Section 1. Section 742.18, Florida Statutes, is amended to
 16 read:

17 742.18 Disestablishment of paternity or termination of
 18 child support obligation.--

19 (1) ~~This section establishes circumstances under which a~~
 20 ~~male may disestablish paternity or terminate a child support~~
 21 ~~obligation when the male is not the biological father of the~~
 22 ~~child.~~ To disestablish paternity or terminate a child support
 23 obligation, the reputed father ~~male~~ must file a petition in the
 24 circuit court having jurisdiction over the child support
 25 obligation. ~~The petition must be served on the mother or other~~
 26 ~~legal guardian or custodian of the child.~~ If the child support
 27 obligation was determined administratively and has not been
 28 ratified by a court, then the petition must be filed in the

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29 circuit court where the mother or legal guardian or custodian
30 resides. The ~~Such a~~ petition must be served on the Department of
31 Revenue and on the mother or legal guardian or custodian of the
32 child. If the mother or legal guardian or custodian no longer
33 resides in the state, the petition may be filed in the circuit
34 court in the county where the petitioner resides. The petition
35 must include:

36 (a) An affidavit executed by the petitioner that newly
37 discovered evidence relating to the paternity of the child has
38 come to the petitioner's knowledge since the initial paternity
39 determination or establishment of a child support obligation.

40 (b) The results of scientific tests that are generally
41 acceptable within the scientific community to show a probability
42 of paternity, administered within 90 days prior to the filing of
43 such petition, which ~~results~~ indicate that the reputed father
44 ~~male~~ ordered to pay such child support cannot be the biological
45 father of the child for whom support is required, or an
46 affidavit executed by the petitioner stating that he did not
47 have access to the child to have scientific testing performed
48 prior to the filing of the petition. A reputed father ~~male~~ who
49 suspects he is not the biological father but does not have
50 access to the child to have scientific testing performed may
51 file a petition requesting the court to order the child to be
52 tested.

53 ~~(c) An affidavit executed by the petitioner stating that~~
54 ~~the petitioner is current on all child support payments for the~~
55 ~~child for whom relief is sought or that he has substantially~~
56 ~~complied with his child support obligation for the applicable~~

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57 ~~child and that any delinquency in his child support obligation~~
58 ~~for that child arose from his inability for just cause to pay~~
59 ~~the delinquent child support when the delinquent child support~~
60 ~~became due.~~

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

64 (a) Newly discovered evidence relating to the paternity of
65 the child has come to the petitioner's knowledge since the
66 initial paternity determination or establishment of a child
67 support obligation.

68 (b) The scientific test required in paragraph (1)(b) was
69 properly conducted.

70 ~~(c) The male ordered to pay child support is current on~~
71 ~~all child support payments for the applicable child or that the~~
72 ~~male ordered to pay child support has substantially complied~~
73 ~~with his child support obligation for the applicable child and~~
74 ~~that any delinquency in his child support obligation for that~~
75 ~~child arose from his inability for just cause to pay the~~
76 ~~delinquent child support when the delinquent child support~~
77 ~~became due.~~

78 (c)~~(d)~~ The reputed father male ordered to pay child
79 support has not adopted the child.

80 (d)~~(e)~~ The child was not conceived by artificial
81 insemination while the reputed father male ordered to pay child
82 support and the child's mother were in wedlock.

83 (e)~~(f)~~ The reputed father male ordered to pay child
84 support did not act to prevent the biological father of the

85 | child from asserting his paternal rights with respect to the
 86 | child.

87 | ~~(f)(g)~~ The child was younger than 18 years of age when the
 88 | petition was filed.

89 | (3) Notwithstanding subsection (2), a court may ~~shall~~ not
 90 | set aside the paternity determination or child support order if
 91 | the reputed father ~~male~~ engaged in the following conduct after
 92 | learning that he is not the biological father of the child:

93 | (a) Married the mother of the child while known as the
 94 | reputed father in accordance with s. 742.091 and voluntarily
 95 | assumed the parental obligation and duty to pay child support;

96 | (b) Acknowledged his paternity of the child in a sworn
 97 | statement;

98 | (c) Consented to be named as the child's biological father
 99 | on the child's birth certificate;

100 | (d) Voluntarily promised in writing to support the child
 101 | and was required to support the child based on that promise;

102 | (e) Received written notice from any state agency or any
 103 | court directing him to submit to scientific testing which he
 104 | disregarded; or

105 | (f) Signed a voluntary acknowledgment of paternity as
 106 | provided in s. 742.10(4).

107 | (4) If ~~In the event~~ the petitioner fails to make the
 108 | requisite showing required by this section, the court shall deny
 109 | the petition.

110 | (5) If ~~In the event~~ relief is granted pursuant to this
 111 | section, it must address ~~relief shall be limited to~~ the issues
 112 | of prospective and past due child support payments and

113 termination of parental rights, custody, and visitation rights.
 114 The petitioner's ~~male's~~ previous status as the child's father
 115 shall continue ~~continues to be in existence~~ until the order
 116 granting relief is rendered. All previous lawful actions taken
 117 based on reliance on that status are confirmed retroactively but
 118 not prospectively. This section does not ~~shall not be construed~~
 119 ~~to~~ create a cause of action to recover child support that was
 120 previously paid.

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

126 (7) ~~(a) In an action brought pursuant to this section,~~ If
 127 the scientific test results submitted in accordance with
 128 paragraph (1) (b) are provided solely by the petitioner ~~male~~
 129 ~~ordered to pay child support~~, the court on its own motion may,
 130 and on the petition of any party shall, order the child and the
 131 reputed father ~~male~~ ordered to pay child support to submit to
 132 applicable scientific tests. ~~The court shall provide that~~ Such
 133 scientific testing must be done within ~~no more than~~ 30 days
 134 after the court issues its order.

135 ~~(a)(b)~~ If the reputed father ~~male~~ ordered to pay child
 136 support willfully fails to submit to scientific testing or if
 137 the mother or legal guardian or custodian of the child willfully
 138 fails to submit the child for testing, the court shall issue an
 139 order determining the relief on the petition against the party
 140 ~~so~~ failing to submit to scientific testing. If a party shows

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141 good cause for failing to submit to testing, such failure may
142 ~~shall~~ not be considered willful. ~~Nothing in~~ This paragraph does
143 not shall prevent the child from reestablishing paternity under
144 s. 742.10.

145 (b)(e) The party requesting applicable scientific testing
146 must shall pay any fees charged for the tests. If the custodian
147 of the child is receiving services from an administrative agency
148 in its role as an agency providing enforcement of child support
149 orders, that agency shall pay the cost of the testing if it
150 requests the test and may seek reimbursement for the fees from
151 the person against whom the court assesses the costs of the
152 action.

153 (8) If the relief on a petition filed in accordance with
154 this section is granted, the clerk of the court shall, within 30
155 days following final disposition, forward to the Office of Vital
156 Statistics of the Department of Health a certified copy of the
157 court order or a report of the proceedings upon a form to be
158 furnished by the department, together with sufficient
159 information to enable the department to identify and, in
160 accordance with s. 382.016(1)(c), amend the child's original
161 birth certificate to remove and to enable the department to
162 prepare a new birth certificate. Upon receipt of the certified
163 copy or the report, the department shall prepare and file a new
164 birth certificate that deletes the name of the reputed father
165 male ordered to pay child support as the father of the child.
166 The certificate shall bear the same file number as the original
167 birth certificate. All other items not affected by the order
168 setting aside a determination of paternity shall be copied as on

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169 ~~the original certificate, including the date of registration and~~
 170 ~~filing.~~ If the child was born in a state other than Florida, the
 171 clerk shall send a copy of the report or decree to the
 172 appropriate birth registration authority of the state where the
 173 child was born. ~~If the relief on a petition filed in accordance~~
 174 ~~with this section is granted and the mother or legal guardian or~~
 175 ~~custodian requests that the court change the child's surname,~~
 176 ~~the court may change the child's surname. If the child is a~~
 177 ~~minor, the court shall consider whether it is in the child's~~
 178 ~~best interests to grant the request to change the child's~~
 179 ~~surname.~~

180 (9) The rendition of an order granting a petition filed
 181 pursuant to this section does ~~shall~~ not affect the legitimacy of
 182 a child born during a lawful marriage.

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

186 (11) ~~Nothing in~~ This section does not preclude ~~precludes~~
 187 an individual from seeking relief from a final judgment, decree,
 188 order, or proceeding pursuant to Rule 1.540, Florida Rules of
 189 Civil Procedure, or from challenging a paternity determination
 190 pursuant to s. 742.10(4).

191 Section 2. This act shall take effect July 1, 2008.