

By Senator Siplin

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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 man seeking to
4 disestablish paternity and terminate a child support
5 obligation to affirm that he is current on his child
6 support obligation or that any delinquency is based on
7 inability to pay; providing for relief from past-due child
8 support obligations; revising a provision relating to
9 naming the father on a child's birth certificates to
10 conform to procedures under ch. 383, 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 man ordered to pay child support male must file a
24 petition in the circuit court having jurisdiction over the child
25 support obligation. ~~The petition must be served on the mother or~~
26 ~~other legal guardian or custodian of the child.~~ If the child
27 support obligation was determined administratively and has not
28 been ratified by a court, then the petition must be filed in the
29 circuit court where the mother or legal guardian or custodian

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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 man ~~male~~ ordered
44 to pay such child support cannot be the biological father of the
45 child for whom support is required, or an affidavit executed by
46 the petitioner stating that he did not have access to the child
47 to have scientific testing performed prior to the filing of the
48 petition. A man ~~male~~ who suspects he is not the biological father
49 but does not have access to the child to have scientific testing
50 performed may file a petition requesting the court to order the
51 child to be tested.

52 ~~(c) An affidavit executed by the petitioner stating that~~
53 ~~the petitioner is current on all child support payments for the~~
54 ~~child for whom relief is sought or that he has substantially~~
55 ~~complied with his child support obligation for the applicable~~
56 ~~child and that any delinquency in his child support obligation~~
57 ~~for that child arose from his inability for just cause to pay the~~

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58 ~~delinquent child support when the delinquent child support became~~
59 ~~due.~~

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

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

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

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

76 (c)~~(d)~~ The man ~~male~~ ordered to pay child support has not
77 adopted the child.

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

81 (e)~~(f)~~ The man ~~male~~ ordered to pay child support did not
82 act to prevent the biological father of the child from asserting
83 his paternal rights with respect to the child.

84 (f)~~(g)~~ The child was younger than 18 years of age when the
85 petition was filed.

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86 (3) Notwithstanding subsection (2), a court may ~~shall~~ not
87 set aside the paternity determination or child support order if
88 the man ordered to pay child support ~~male~~ engaged in the
89 following conduct after learning that he is not the biological
90 father of the child:

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

94 (b) Acknowledged his paternity of the child in a sworn
95 statement;

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

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

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

103 (f) Signed a voluntary acknowledgment of paternity as
104 provided in s. 742.10(4).

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

108 (5) If the petitioner is entitled to ~~In the event~~ relief
109 under is granted pursuant to this section, the court shall
110 terminate all relief shall be limited to the issues of
111 prospective and past due child support payment obligations
112 payments and address termination of parental rights, custody, and
113 visitation rights. The petitioner's ~~male's~~ previous status as the
114 child's father shall continue ~~continues to be in existence~~ until

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115 the order granting relief is rendered. All previous lawful
116 actions taken based on reliance on that status are confirmed
117 retroactively but not prospectively. This section does not ~~shall~~
118 ~~not be construed to~~ create a cause of action to recover child
119 support that was previously paid.

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

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

134 ~~(a) (b)~~ If the man ~~male~~ ordered to pay child support
135 willfully fails to submit to scientific testing or if the mother
136 or legal guardian or custodian of the child willfully fails to
137 submit the child for testing, the court shall issue an order
138 determining the relief on the petition against the party ~~so~~
139 failing to submit to scientific testing. If a party shows good
140 cause for failing to submit to testing, such failure may ~~shall~~
141 not be considered willful. ~~Nothing in~~ This paragraph does not
142 ~~shall~~ prevent the child from reestablishing paternity under s.
143 742.10.

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

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

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173 the mother or legal guardian or custodian requests that the court
174 change the child's surname, the court may change the child's
175 surname. If the child is a minor, the court shall consider
176 whether it is in the child's best interests to grant the request
177 to change the child's surname.

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

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

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

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