

By Senator Steube

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1 A bill to be entitled
2 An act relating to the determination of parentage;
3 amending s. 742.13, F.S.; defining the term "alleged
4 parent"; creating s. 742.19, F.S.; providing
5 presumptions of legal parentage; authorizing a child,
6 the child's mother, or the child's alleged parent to
7 file a petition in circuit court to rebut the
8 presumption of legal parentage and establish actual
9 legal parentage; requiring such petition to include
10 certain information; requiring the court to appoint a
11 guardian ad litem or an attorney ad litem under
12 certain conditions; providing qualifications and
13 requirements for a guardian ad litem; requiring the
14 court to hold an evidentiary hearing on the petition
15 to make a certain determination; requiring the court
16 to dismiss the petition under certain circumstances;
17 requiring the court to order genetic testing of the
18 child and the alleged parent if the court allows the
19 petition to proceed; requiring certain information to
20 be included in the order; requiring the alleged parent
21 to file the test results with the court on or before a
22 specified date; specifying that a statistical
23 probability of parentage of 95 percent or more creates
24 a rebuttable presumption that the alleged parent is a
25 biological parent; providing a procedure for a party
26 to object to the test results; authorizing the court
27 to enter a summary judgment of parentage and requiring
28 the court to hold a trial if a presumption of
29 parentage is established; requiring the court to

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30 dismiss the petition and seal the court file if the
31 test results indicate that the alleged parent is not a
32 biological parent; requiring the court to determine
33 parental rights in the best interest of the child;
34 requiring the court to evaluate specified factors to
35 determine the best interest of the child; providing
36 information to be included in final orders or
37 judgments; authorizing the court to approve, grant, or
38 modify a parenting plan in the best interest of the
39 child and under certain conditions; requiring that a
40 parenting plan include certain information;
41 authorizing the court to order the payment of child
42 support; requiring the court to consider certain
43 criteria in its calculation of child support;
44 authorizing the court to modify a parenting plan or
45 child support order entered pursuant to this section
46 upon a showing by the parent petitioning for
47 modification that a substantial change in
48 circumstances has occurred; clarifying that an order
49 entered under this section does not impugn or affect a
50 child's legitimacy; amending s. 61.046, F.S.;
51 clarifying that a parenting plan entered under a
52 specified section determines the rights of custody and
53 access for purposes of the Uniform Child Custody
54 Jurisdiction and Enforcement Act, the International
55 Child Abduction Remedies Act, and the Convention on
56 the Civil Aspects of International Child Abduction;
57 providing an effective date.

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

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61 Section 1. Section 742.13, Florida Statutes, is amended to
62 read:

63 742.13 Definitions.—As used in ss. 742.11-742.19 ~~ss.~~
64 ~~742.11-742.17~~, the term:

65 (1) "Alleged parent" means a person with a reasonable and
66 well-founded belief that he or she is a child's biological
67 parent.

68 (2)~~(1)~~ "Assisted reproductive technology" means those
69 procreative procedures which involve the laboratory handling of
70 human eggs or preembryos, including, but not limited to, in
71 vitro fertilization embryo transfer, gamete intrafallopian
72 transfer, pronuclear stage transfer, tubal embryo transfer, and
73 zygote intrafallopian transfer.

74 (3)~~(2)~~ "Commissioning couple" means the intended mother and
75 father of a child who will be conceived by means of assisted
76 reproductive technology using the eggs or sperm of at least one
77 of the intended parents.

78 (4)~~(3)~~ "Egg" means the unfertilized female reproductive
79 cell.

80 (5)~~(4)~~ "Fertilization" means the initial union of an egg
81 and sperm.

82 (6)~~(5)~~ "Gestational surrogate" means a woman who contracts
83 to become pregnant by means of assisted reproductive technology
84 without the use of an egg from her body.

85 (7)~~(6)~~ "Gestational surrogacy" means a state that results
86 from a process in which a commissioning couple's eggs or sperm,
87 or both, are mixed in vitro and the resulting preembryo is

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88 implanted within another woman's body.

89 (8)~~(7)~~ "Gestational surrogacy contract" means a written
90 agreement between the gestational surrogate and the
91 commissioning couple.

92 (9)~~(8)~~ "Gamete intrafallopian transfer" means the direct
93 transfer of eggs and sperm into the fallopian tube prior to
94 fertilization.

95 (10)~~(9)~~ "Implantation" means the event that occurs when a
96 fertilized egg adheres to the uterine wall for nourishment.

97 (11)~~(10)~~ "In vitro" refers to a laboratory procedure
98 performed in an artificial environment outside a woman's body.

99 (12)~~(11)~~ "In vitro fertilization embryo transfer" means the
100 transfer of an in vitro fertilized preembryo into a woman's
101 uterus.

102 (13)~~(12)~~ "Preembryo" means the product of fertilization of
103 an egg by a sperm until the appearance of the embryonic axis.

104 (14)~~(13)~~ "Pronuclear stage transfer" or "zygote
105 intrafallopian transfer" means the transfer of an in vitro
106 fertilized preembryo into the fallopian tube before cell
107 division takes place.

108 (15)~~(14)~~ "Sperm" means the male reproductive cell.

109 (16)~~(15)~~ "Tubal embryo transfer" means the transfer of a
110 dividing, in vitro fertilized preembryo into the fallopian tube.

111 Section 2. Section 742.19, Florida Statutes, is created to
112 read:

113 742.19 Establishment of parentage for children born in
114 wedlock or when parentage is otherwise established by law.-

115 (1) A person is presumed to be the legal parent of a child
116 when:

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117 (a) At the time of the child's conception or birth, the
118 person was married to the child's mother; or

119 (b) Parentage has been established under s. 742.091, s.
120 742.10, or s. 742.105.

121 (2) The child, the child's mother, or the child's alleged
122 parent may rebut the presumption of legal parentage in
123 subsection (1) and establish actual legal parentage by filing a
124 petition in circuit court. The petition must:

125 (a) Be signed by the petitioner under oath.

126 (b) Identify as parties the mother, the mother's spouse,
127 the alleged parent, and any other person who may be the parent.

128 (c) Provide specific facts to support a claim that the
129 alleged parent is the biological parent of the child, that the
130 alleged parent has demonstrated a substantial interest in or
131 concern for the welfare of the child, and that it is in the best
132 interest of the child to establish the alleged parent as the
133 legal parent of the child.

134 (3) (a) The court must appoint a guardian ad litem for the
135 child unless good cause is shown that a guardian ad litem is not
136 needed. The person appointed as a guardian ad litem must meet
137 the qualifications in s. 61.402, shall have the powers and
138 authorities described in s. 61.403, and must maintain
139 confidentiality in accordance with s. 61.404, unless otherwise
140 specified by a court order.

141 (b) If the court determines that the child is of sufficient
142 age and understanding to participate in the proceedings, the
143 court must appoint an attorney ad litem for the child in lieu of
144 a guardian ad litem unless good cause is shown that an attorney
145 ad litem is not needed.

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146 (4) (a) The court shall hold an evidentiary hearing on the
147 petition to determine whether:

148 1. The alleged parent has demonstrated a substantial
149 interest in or concern for the welfare of the child.

150 2. The best interest of the child would be served by
151 allowing the petition to proceed.

152 (b) In making its determination, the court shall give
153 particular weight to the fact that the mother is deceased or
154 incapacitated, or that the mother seeks or obtains a dissolution
155 of her marriage to her spouse.

156 (c) If the court determines that the alleged parent has not
157 demonstrated a substantial interest in or concern for the
158 welfare of the child or that the best interest of the child
159 would not be served by allowing the petition to proceed, the
160 court must dismiss the petition and seal the court file.

161 (5) (a) If the petition is allowed to proceed under
162 subsection (4), the court must order the child and the alleged
163 parent to submit to genetic testing conducted by a qualified
164 technical laboratory, as defined in s. 409.256, to determine the
165 probability of parentage. Upon the entry of the order for
166 scientific testing, the court must inform each person to be
167 tested of the procedures and requirements for objecting to the
168 test results and of the consequences of the failure to object.

169 (b) The alleged parent shall file the test results,
170 together with the opinions and conclusions of the test
171 laboratory, with the court on or before a date specified in the
172 order. Test results are admissible in evidence and should be
173 weighed along with other evidence of the parentage of the
174 alleged parent unless the statistical probability of parentage

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175 equals or exceeds 95 percent. A statistical probability of
176 parentage of 95 percent or more creates a rebuttable
177 presumption, as defined in s. 90.304, that the alleged parent is
178 a biological parent of the child.

179 (c) Any objection to the test results must be made in
180 writing and must be filed with the court no more than 10 days
181 after the test results are filed.

182 1. If no objection is filed, the test results shall be
183 admitted into evidence without the need for predicate to be laid
184 or third-party foundation testimony to be presented.

185 2. If an objection is filed, the court must hold an
186 evidentiary hearing. Nothing in this paragraph prohibits a party
187 from calling an outside expert witness to refute or support the
188 testing procedure or results, or the mathematical theory on
189 which they are based. If the test results or the expert analysis
190 of the inherited characteristics is disputed, the court, upon
191 reasonable request of a party, must order that an additional
192 test be made by the same laboratory or an independent laboratory
193 at the expense of the party requesting additional testing.

194 (d) If no objection is filed or if a party fails to rebut
195 the presumption of parentage which arose from the statistical
196 probability of parentage of 95 percent or more, the court may
197 enter a summary judgment of parentage and must hold a trial
198 pursuant to subsection (6). If the test results indicate that
199 the alleged parent is not a biological parent, the court must
200 dismiss the petition and seal the court file.

201 (6) If the genetic testing establishes that the alleged
202 parent is the biological parent of the child, the court must
203 hold a trial to determine whether:

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- 204 (a) The mother's spouse remains the legal parent of the
205 child based on the best interest of the child;
- 206 (b) The parentage and legal rights and obligations of the
207 mother's spouse are terminated and granted to the biological
208 parent; or
- 209 (c) The mother, mother's spouse, and biological parent must
210 share parental rights and responsibilities.
- 211 (7) To determine the best interest of the child, the court
212 shall evaluate all of the following:
- 213 (a) The established bond between the child and the mother's
214 spouse, including love, affection, and emotional ties.
- 215 (b) The established bond between the child and the
216 biological parent, including love, affection, and emotional
217 ties.
- 218 (c) The permanence and stability of the child's current
219 family unit or units, including the length of time the child has
220 lived in a satisfactory environment and the desirability of
221 maintaining continuity or creating stability.
- 222 (d) The capacity and disposition of the mother's spouse and
223 the biological parent to provide for the child's financial
224 needs.
- 225 (e) The moral fitness of the mother's spouse and the
226 biological parent.
- 227 (f) The mental and physical health of the mother's spouse
228 and the biological parent.
- 229 (g) The home, school, and community record of the child.
- 230 (h) The preference of the child, taking into consideration
231 the child's age and understanding.
- 232 (i) Whether the mother's spouse or the biological parent

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233 has abandoned, abused, or neglected the child, or has otherwise
234 been remiss in his or her responsibilities toward the child.

235 (j) Whether the mother's spouse or the biological parent
236 has ever acted contrary to the best interest of the child.

237 (k) Whether the mother's spouse or the biological parent
238 wishes to exercise or continue to exercise parental rights.

239 (l) Whether the mother is deceased or incapacitated.

240 (m) Whether the mother seeks or obtains a dissolution of
241 her marriage to the spouse.

242 (n) Any other factor affecting the welfare and interests of
243 the child and the circumstances of that family.

244 (8) (a) If the court determines that it is in the best
245 interest of the child for the mother's spouse to remain the
246 legal parent of the child to the exclusion of the biological
247 parent, the court must dismiss the petition and seal the court
248 file.

249 (b) If the court determines that it is in the best interest
250 of the child for the parental rights of the mother's spouse to
251 be terminated and the biological parent to be the legal parent
252 of the child, the court must enter a final order or judgment:

253 1. Terminating the parental rights and responsibilities of
254 the mother's spouse, declaring that the biological parent is the
255 legal parent of the child, and specifying the biological
256 parent's parental rights and responsibilities, including, but
257 not limited to, time-sharing and child support.

258 2. Requiring that the biological parent's name be
259 substituted on the child's birth certificate and the mother's
260 spouse's name be removed.

261 (c) If the court determines that the mother's spouse and

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262 the biological parent have each established a substantial
263 relationship with the child and that it is in the best interest
264 of the child for both the mother's spouse and the biological
265 parent to be the child's legal parents, the court shall enter a
266 final order or judgment:

267 1. Preserving the parental rights of the mother's spouse.

268 2. Establishing the biological parent's parental rights and
269 responsibilities as the child's third legal parent.

270 3. Requiring the Office of Vital Statistics of the
271 Department of Health to amend the child's birth certificate to
272 add the third legal parent.

273 4. Declaring that each legal parent is recognized as an
274 equal parent to the child and has equal standing to secure
275 shared parenting rights to time-sharing, parental
276 responsibility, and child support.

277 (9) The court may approve, grant, or modify a parenting
278 plan, as defined in s. 61.046, in a final order or judgment
279 entered pursuant to paragraph (8)(b) or paragraph (8)(c). A
280 parenting plan may be developed and agreed to by all legal
281 parents and approved by a court or may be established by the
282 court.

283 (a) The court may approve or establish a parenting plan,
284 regardless of whether the child is physically present in this
285 state, if the court finds that the child was removed from this
286 state for the primary purpose of removing the child from the
287 court's jurisdiction in an attempt to avoid the court's
288 approval, creation, or modification of the parenting plan.

289 (b) A parenting plan approved or established by the court
290 must describe the shared responsibilities for the daily tasks of

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291 parenting; the time-sharing schedule specifying the time the
292 child will spend with each parent; a designation of which parent
293 will be responsible for health care, school-related matters, and
294 extracurricular activities; the address to be used for school-
295 boundary determination and registration; and the means of
296 communication or technology which the parents will use to
297 communicate with the child.

298 (c) The court shall determine matters relating to the
299 parenting and time-sharing of each child of the parties in
300 accordance with the Uniform Child Custody Jurisdiction and
301 Enforcement Act, part II of chapter 61. The best interest of the
302 child should govern and be of foremost concern in the court's
303 determination.

304 (10) The court may order the payment of child support by
305 any legal parent or parents owing a duty of support in a final
306 order or judgment entered pursuant to paragraph (8) (b) or
307 paragraph (8) (c). When calculating child support, the court
308 shall:

309 (a)1. For an order entered pursuant to paragraph (8) (b),
310 calculate support obligations pursuant to s. 61.30.

311 2. For an order entered pursuant to paragraph (8) (c),
312 ensure that the child receives the same full benefit of the
313 total child support as a child would receive under the
314 guidelines schedule in s. 61.30.

315 (b) Consider each deviation factor listed in s.
316 61.30(11) (a) to ensure that the distribution of the child
317 support is fair and equitable.

318 (11) The court may modify a parenting plan or child support
319 order entered pursuant to this section upon a showing by the

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320 parent petitioning for modification that a substantial change in
321 circumstances has occurred.

322 (12) An order entered pursuant to this section does not
323 impugn or affect a child's legitimacy.

324 Section 3. Paragraphs (c) and (d) of subsection (14) of
325 section 61.046, Florida Statutes, are amended to read:

326 61.046 Definitions.—As used in this chapter, the term:

327 (14) "Parenting plan" means a document created to govern
328 the relationship between the parents relating to decisions that
329 must be made regarding the minor child and must contain a time-
330 sharing schedule for the parents and child. The issues
331 concerning the minor child may include, but are not limited to,
332 the child's education, health care, and physical, social, and
333 emotional well-being. In creating the plan, all circumstances
334 between the parents, including their historic relationship,
335 domestic violence, and other factors must be taken into
336 consideration.

337 (c) For purposes of the Uniform Child Custody Jurisdiction
338 and Enforcement Act, part II of this chapter, a judgment or
339 order incorporating a parenting plan under this part or under s.
340 742.19 is a child custody determination under part II of this
341 chapter.

342 (d) For purposes of the International Child Abduction
343 Remedies Act, 42 U.S.C. ss. 11601 et seq., and the Convention on
344 the Civil Aspects of International Child Abduction, enacted at
345 the Hague on October 25, 1980, rights of custody and rights of
346 access are determined pursuant to the parenting plan under this
347 part or under s. 742.19.

348 Section 4. This act shall take effect July 1, 2018.