

House Bill No. 7151

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

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

Section 1. (1) This section establishes circumstances under which a male may disestablish paternity or terminate a child support obligation when the male is not the biological father of the child. To disestablish paternity or terminate a child support obligation, the male must file a petition in the circuit court having jurisdiction over the child support obligation. The petition must be served on the mother or other legal guardian or custodian of the child. If the child support obligation was determined administratively and has not been ratified by a court, then the petition must be filed in the circuit court where the mother or legal guardian or custodian resides. Such a petition must be served on the Department of Revenue and on the mother or legal guardian or custodian. If the mother or legal guardian or custodian no longer resides in the state, the petition may be filed in the circuit court in the county where the petitioner resides. The petition must include:

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

(b) The results of scientific tests that are generally acceptable within the scientific community to show a probability of paternity, administered within 90 days prior to the filing of such petition, which results indicate that the male ordered to pay such child support cannot be the father of the child for whom support is required, or an affidavit executed by the petitioner stating

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(8) If the relief on a petition filed in accordance with this section is granted, the clerk of the court shall, within 30 days following final disposition, forward to the Office of Vital Statistics of the Department of Health a

certified copy of the court order or a report of the proceedings upon a form to be furnished by the department, together with sufficient information to identify the original birth certificate and to enable the department to prepare a new birth certificate. Upon receipt of the certified copy or the report, the department shall prepare and file a new birth certificate that deletes the name of the male ordered to pay child support as the father of the child. The certificate shall bear the same file number as the original birth certificate. All other items not affected by the order setting aside a determination of paternity shall be copied as on the original certificate, including the date of registration and filing. If the child was born in a state other than Florida, the clerk shall send a copy of the report or decree to the appropriate birth registration authority of the state where the child was born. If the relief on a petition filed in accordance with this section is granted and the mother or legal guardian or custodian requests that the court change the child's surname, the court may change the child's surname. If the child is a minor, the court shall consider whether it is in the child's best interests to grant the request to change the child's surname.

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

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

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

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

63.054 Actions required by an unmarried biological father to establish parental rights; Florida Putative Father Registry.—

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

(5) The registrant may, at any time prior to the birth of the child for whom paternity is claimed, execute a notarized written revocation of the claim of paternity previously filed with the Florida Putative Father Registry, and upon receipt of such revocation, the claim of paternity shall be deemed null and void. If a court determines that a registrant is not the father of the minor or has no parental rights, the court shall order the Department of Health to remove the registrant's name from the registry.

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

63.062 Persons required to consent to adoption; affidavit of nonpaternity; waiver of venue.—

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

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

63.182 Statute of repose.—

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

(2)(a) Except for the specific persons expressly entitled to be given notice of an adoption in accordance with this chapter, the interest that entitles a person to notice of an adoption must be direct, financial, and immediate and the person must show that he or she will gain or lose by the direct legal operation and effect of the judgment. A showing of an indirect, inconsequential, or contingent interest is wholly inadequate and a person with this indirect interest lacks standing to set aside a judgment of adoption.

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

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

Approved by the Governor June 20, 2006.

Filed in Office Secretary of State June 20, 2006.