

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

H

1

HOUSE BILL 597

Short Title: Relief From Child Support Order. (Public)

Sponsors: Representatives Cleveland, Moore (Primary Sponsors); Blackwood, Brown, Current, Dockham, McGee, Pate, Setzer, and Steen.

Referred to: Judiciary II.

March 13, 2007

A BILL TO BE ENTITLED

AN ACT ALLOWING RELIEF FROM A CHILD SUPPORT ORDER WHEN THE OBLIGOR IS NOT THE CHILD'S FATHER.

The General Assembly of North Carolina enacts:

SECTION 1. Article 1 of Chapter 50 of the General Statutes is amended by adding the following new section to read:

"§ 50-13.13. Motion for relief from child support order based on finding of nonpaternity.

(a) Notwithstanding G.S. 1A-1, Rule 60 of the North Carolina Rules of Civil Procedure, or any other provision of law, an individual who, as the father of a child, is required to pay child support under an order that was entered by a North Carolina court pursuant to Chapter 49, 50, 52C, or 110 of the General Statutes and that is subject to modification by a North Carolina court under applicable law may file a motion seeking relief from a child support order as provided in this section.

(b) A motion for relief under this section must be filed as a motion in the cause in the pending child support action. The motion must be verified by the moving party, state with particularity the basis on which the moving party believes that he is not the child's father, and state that the moving party either: (i) has not acknowledged paternity of the child; or (ii) acknowledged paternity without knowing that he was not the child's biological father.

(c) The court, in its discretion, may appoint a guardian ad litem to represent the interest of the child in connection with a proceeding under this section.

(d) Notwithstanding G.S. 8-50.1(b1), the court shall, upon motion of a party in a proceeding under this section, order the moving party, the child's mother, and the child to submit to genetic paternity testing if the court finds that there is good cause to believe that the moving party is not the child's father and that the moving party may be entitled to relief under this section. If genetic paternity testing is ordered, the provisions of G.S. 8-50.1(b1) shall govern the admissibility and weight of the genetic test results and

1 the payment of and taxing of the costs of genetic testing. If a party fails to comply with
2 an order for genetic testing without good cause, the court may hold the party in civil or
3 criminal contempt or impose appropriate sanctions under G.S. 1A-1, Rule 37 of the
4 North Carolina Rules of Civil Procedure, or both.

5 (e) The moving party's child support obligation shall not be suspended while the
6 motion is pending before the court.

7 (f) The court may grant relief from a child support order under this section if the
8 moving party proves by clear and convincing evidence, and the court, sitting without a
9 jury, finds that:

10 (1) The results of a valid genetic test establish that the moving party is not
11 the child's biological father.

12 (2) The moving party either: (i) has not acknowledged paternity of the
13 child; or (ii) acknowledged paternity without knowing that he was not
14 the child's biological father. For purposes of this section,
15 acknowledging paternity means that the moving party has done any of
16 the following:

17 a. Publicly acknowledged the child as his own and supported the
18 child while married to the child's mother.

19 b. Acknowledged paternity in a sworn written statement, including
20 an affidavit of parentage executed under G.S. 110-132(a) or
21 G.S. 130A-101(f).

22 c. Executed a consent order, a voluntary support agreement under
23 G.S. 110-132 or G.S. 110-133, or any other legal agreement to
24 pay child support as the child's father.

25 d. Admitted paternity in open court or in any pleading.

26 (3) The moving party has not adopted the child, has not legitimated the
27 child pursuant to G.S. 49-10, 49-12, or 49-12.1, or is not the child's
28 legal father pursuant to G.S. 49A-1.

29 (4) The moving party did not act to prevent the child's biological father
30 from asserting his paternal rights regarding the child.

31 (g) If the court determines that the moving party is not entitled to relief under this
32 section, the court shall deny the motion, and all orders regarding the child's paternity,
33 support, or custody shall remain enforceable and in effect until modified as otherwise
34 provided by law.

35 (h) If the court determines that the moving party is entitled to relief under this
36 section, the court shall enter an order, including written findings of fact and conclusions
37 of law, terminating the moving party's child support obligation regarding the child. The
38 court may relieve the moving party of liability with respect to unpaid child support
39 arrearages that accrued before the date of entry of an order for relief under this section.
40 If the child was born in North Carolina and the moving party is named as the father on
41 the child's birth certificate, the court shall order the clerk of superior court to notify the
42 State Registrar of the court's order pursuant to G.S. 130A-118(b)(2). If relief is granted
43 under this section, a party may, to the extent otherwise provided by law, apply for

1 modification of or relief from any judgment or order involving the moving party's
2 paternity of the child."

3 **SECTION 2.** This act becomes effective January 1, 2008, and applies to
4 motions for relief filed on or after that date.