

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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HOUSE BILL 597
Committee Substitute Favorable 5/22/07

Short Title: Relief From Incorrect Paternity Determin.

(Public)

Sponsors:

Referred to:

March 13, 2007

A BILL TO BE ENTITLED

AN ACT TO ALLOW 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 shall 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
the payment of and taxing of the costs of genetic testing. If a party fails to comply with

1 an order for genetic testing without good cause, the court may hold the party in civil or
2 criminal contempt or impose appropriate sanctions under G.S. 1A-1, Rule 37 of the
3 North Carolina Rules of Civil Procedure, or both.

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

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

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

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

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

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

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

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

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

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

30 (g) If the court determines that the moving party has not satisfied the
31 requirements of this section, the court shall deny the motion, and all orders regarding
32 the child's paternity, support, or custody shall remain enforceable and in effect until
33 modified as otherwise provided by law. If the court finds that the moving party did not
34 act in good faith in filing a motion pursuant to this section, the court shall award
35 reasonable attorneys' fees to the prevailing party. The court shall make findings of fact
36 and conclusions of law to support its award of attorneys' fees under this subsection.

37 (h) If the court determines that the moving party has satisfied the requirements of
38 this section, the court shall either:

39 (1) Dismiss the action to overcome paternity and affirm the original
40 paternity adjudication if the court, upon making appropriate findings
41 of fact and conclusions of law, determines that such action is in the
42 best interest of the child.

43 (2) Enter an order, including written findings of fact and conclusions of
44 law, terminating the moving party's child support obligation regarding

1 the child. Any unpaid support due prior to the date the order
2 determining that the moving party is not the biological father is filed,
3 is due and owing. The moving party has no right to reimbursement of
4 past child support paid on behalf of the child to the State or any other
5 assignee of child support. If the child was born in North Carolina and
6 the moving party is named as the father on the child's birth certificate,
7 the court shall order the clerk of superior court to notify the State
8 Registrar of the court's order pursuant to G.S. 130A-118(b)(2). If relief
9 is granted under this subdivision, a party may, to the extent otherwise
10 provided by law, apply for modification of or relief from any judgment
11 or order involving the moving party's paternity of the child."

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