

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

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HOUSE DRH70076-LU-29 (2/3)

Short Title: Relief From Incorrect Paternity Determination.

(Public)

Sponsors: Representatives Cleveland and Moore (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED  
2 AN ACT TO ALLOW RELIEF FROM A CHILD SUPPORT ORDER WHEN THE  
3 OBLIGOR IS NOT THE CHILD'S FATHER.

4 The General Assembly of North Carolina enacts:

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

7 "**§ 50-13.13. Motion for relief from child support order based on finding of nonpaternity.**

8 (a) Notwithstanding G.S. 1A-1, Rule 60 of the North Carolina Rules of Civil Procedure,  
9 or any other provision of law, an individual who, as the father of a child, is required to pay  
10 child support under an order that was entered by a North Carolina court pursuant to Chapter 49,  
11 50, 52C, or 110 of the General Statutes and that is subject to modification by a North Carolina  
12 court under applicable law may file a motion seeking relief from a child support order as  
13 provided in this section.

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

19 (c) The court shall appoint a guardian ad litem to represent the interest of the child in  
20 connection with a proceeding under this section.

21 (d) Notwithstanding G.S. 8-50.1(b1), the court shall, upon motion of a party in a  
22 proceeding under this section, order the moving party, the child's mother, and the child to  
23 submit to genetic paternity testing if the court finds that there is good cause to believe that the  
24 moving party is not the child's father and that the moving party may be entitled to relief under  
25 this section. If genetic paternity testing is ordered, the provisions of G.S. 8-50.1(b1) shall  
26 govern the admissibility and weight of the genetic test results and the payment of and taxing of  
27 the costs of genetic testing. If a party fails to comply with an order for genetic testing without  
28 good cause, the court may hold the party in civil or criminal contempt or impose appropriate  
29 sanctions under G.S. 1A-1, Rule 37 of the North Carolina Rules of Civil Procedure, or both.

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

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



- 1           (1)    The results of a valid genetic test establish that the moving party is not the  
2           child's biological father.
- 3           (2)    The moving party either: (i) has not acknowledged paternity of the child; or  
4           (ii) acknowledged paternity without knowing that he was not the child's  
5           biological father. For purposes of this section, acknowledging paternity  
6           means that the moving party has done any of the following:
- 7           a.     Publicly acknowledged the child as his own and supported the child  
8           while married to the child's mother.
- 9           b.     Acknowledged paternity in a sworn written statement, including an  
10           affidavit of parentage executed under G.S. 110-132(a) or  
11           G.S. 130A-101(f).
- 12           c.     Executed a consent order, a voluntary support agreement under  
13           G.S. 110-132 or G.S. 110-133, or any other legal agreement to pay  
14           child support as the child's father.
- 15           d.     Admitted paternity in open court or in any pleading.
- 16           (3)    The moving party has not adopted the child, has not legitimated the child  
17           pursuant to G.S. 49-10, 49-12, or 49-12.1, or is not the child's legal father  
18           pursuant to G.S. 49A-1.
- 19           (4)    The moving party did not act to prevent the child's biological father from  
20           asserting his paternal rights regarding the child.
- 21           (g)    If the court determines that the moving party has not satisfied the requirements of  
22           this section, the court shall deny the motion, and all orders regarding the child's paternity,  
23           support, or custody shall remain enforceable and in effect until modified as otherwise provided  
24           by law. If the court finds that the moving party did not act in good faith in filing a motion  
25           pursuant to this section, the court shall award reasonable attorneys' fees to the prevailing party.  
26           The court shall make findings of fact and conclusions of law to support its award of attorneys'  
27           fees under this subsection.
- 28           (h)    If the court determines that the moving party has satisfied the requirements of this  
29           section, the court shall either:
- 30           (1)    Dismiss the action to overcome paternity and affirm the original paternity  
31           adjudication if the court, upon making appropriate findings of fact and  
32           conclusions of law, determines that such action is in the best interest of the  
33           child.
- 34           (2)    Enter an order, including written findings of fact and conclusions of law,  
35           terminating the moving party's child support obligation regarding the child.  
36           Any unpaid support due prior to the date the order determining that the  
37           moving party is not the biological father is filed, is due and owing. The  
38           moving party has no right to reimbursement of past child support paid on  
39           behalf of the child to the State or any other assignee of child support. If the  
40           child was born in North Carolina and the moving party is named as the  
41           father on the child's birth certificate, the court shall order the clerk of  
42           superior court to notify the State Registrar of the court's order pursuant to  
43           G.S. 130A-118(b)(2). If relief is granted under this subdivision, a party may,  
44           to the extent otherwise provided by law, apply for modification of or relief  
45           from any judgment or order involving the moving party's paternity of the  
46           child."

47           **SECTION 2.** This act becomes effective January 1, 2010, and applies to motions  
48 for relief filed on or after that date.