

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 587

Short Title: Set Aside Child Supp./Limited Circumstances. (Public)

Sponsors: Senators McKissick; Apodaca, Atwater, Berger of Franklin, Blake, Boseman, Davis, Foriest, Forrester, Graham, Hartsell, Jones, Kinnaird, Rucho, Stevens, Tillman, and Vaughan.

Referred to: Judiciary I.

March 12, 2009

1 A BILL TO BE ENTITLED
2 AN ACT ESTABLISHING A PROCESS TO SET ASIDE AN ORDER OF PATERNITY OR
3 AN AFFIDAVIT OF PARENTAGE UNDER LIMITED CIRCUMSTANCES.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. G.S. 49-14 reads as rewritten:

6 "§ 49-14. **Civil action to establish ~~paternity~~paternity; motion to set aside paternity.**

7 (a) The paternity of a child born out of wedlock may be established by civil action at
8 any time prior to such child's eighteenth birthday. A copy of a certificate of birth of the child
9 shall be attached to the complaint. The establishment of paternity shall not have the effect of
10 legitimation. The social security numbers, if known, of the minor child's parents shall be placed
11 in the record of the proceeding.

12 (b) Proof of paternity pursuant to this section shall be by clear, cogent, and convincing
13 evidence.

14 (c) No such action shall be commenced nor judgment entered after the death of the
15 putative father, unless the action is commenced either:

16 (1) Prior to the death of the putative father;

17 (2) Within one year after the date of death of the putative father, if a proceeding
18 for administration of the estate of the putative father has not been
19 commenced within one year of his death; or

20 (3) Within the period specified in G.S. 28A-19-3(a) for presentation of claims
21 against an estate, if a proceeding for administration of the estate of the
22 putative father has been commenced within one year of his death.

23 Any judgment under this subsection establishing a decedent to be the father of a child shall
24 be entered nunc pro tunc to the day preceding the date of death of the father.

25 (d) If the action to establish paternity is brought more than three years after birth of a
26 child or is brought after the death of the putative father, paternity shall not be established in a
27 contested case without evidence from a blood or genetic marker test.

28 (e) Either party to an action to establish paternity may request that the case be tried at
29 the first session of the court after the case is docketed, but the presiding judge, in his discretion,
30 may first try any pending case in which the rights of the parties or the public demand it.

31 (f) When a determination of paternity is pending in a IV-D case, the court shall enter a
32 temporary order for child support upon motion and showing of clear, cogent, and convincing
33 evidence of paternity. For purposes of this subsection, the results of blood or genetic tests shall
34 constitute clear, cogent, and convincing evidence of paternity if the tests show that the
35 probability of the alleged parent's parentage is ninety-seven percent (97%) or higher. If



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1 paternity is not thereafter established, then the putative father shall be reimbursed the full
2 amount of temporary support paid under the order.

3 (g) Invoices for services rendered for pregnancy, childbirth, and blood or genetic testing
4 are admissible as evidence without requiring third party foundation testimony and shall
5 constitute prima facie evidence of the amounts incurred for the services or for testing on behalf
6 of the child.

7 (h) Notwithstanding the time limitations of G.S. 1A-1, Rule 60 of the North Carolina
8 Rules of Civil Procedure, or any other provision of law, an order of paternity may be set aside
9 by a trial court if:

10 (1) The paternity order was entered as the result of fraud, duress, mutual
11 mistake, or excusable neglect; and

12 (2) Genetic tests establish the putative father is not the biological father of the
13 child.

14 The burden of proof in any motion to set aside an order of paternity shall be on the moving
15 party. Child support responsibilities of the parties may not be suspended while the motion is
16 pending, except for good cause shown. Upon proper motion alleging fraud, duress, mutual
17 mistake, or excusable neglect, the court shall order the child's mother, the child whose
18 parentage is at issue, and the putative father to submit to genetic paternity testing pursuant to
19 G.S. 8-50.1(b1). If the court determines as a result of genetic testing the putative father is not
20 the biological father of the child and the order of paternity was entered as a result of fraud,
21 duress, mutual mistake, or excusable neglect, the court may set aside the order of paternity and
22 terminate all future child support obligations of the putative father with regard to the minor
23 child whose parentage is at issue. If the court sets aside an order of paternity pursuant to this
24 section, no party may be required to reimburse past child support paid on behalf of the child to
25 the custodial parent, the State, or any other assignee of child support. Any past due child
26 support payment vested pursuant to G.S. 50-13.10, shall not be affected by any order entered
27 pursuant to this section. All vested child support arrears shall remain due and owing."

28 **SECTION 2.** G.S. 110-132 reads as rewritten:

29 **"§ 110-132. Affidavit of parentage and agreement to support.** ~~**motion to set aside affidavit**~~
30 ~~**of parentage.**~~

31 (a) In lieu of or in conclusion of any legal proceeding instituted to establish paternity,
32 the written affidavits of parentage executed by the putative father and the mother of the
33 dependent child shall constitute an admission of paternity and shall have the same legal effect
34 as a judgment of paternity for the purpose of establishing a child support obligation, subject to
35 the right of either signatory to rescind within the earlier of:

36 (1) 60 days of the date the document is executed, or

37 (2) The date of entry of an order establishing paternity or an order for the
38 payment of child support.

39 In order to rescind, a challenger must request the district court to order the rescission and to
40 include in the order specific findings of fact that the request for rescission was filed with the
41 clerk of court within 60 days of the signing of the document. The court must also find that all
42 parties, including the child support enforcement agency, if appropriate, have been served in
43 accordance with Rule 4 of the North Carolina Rules of Civil Procedure. In the event the court
44 orders rescission and the putative father is thereafter found not to be the father of the child, then
45 the clerk of court shall send a copy of the order of rescission to the State Registrar of Vital
46 Statistics. Upon receipt of an order of rescission, the State Registrar shall remove the putative
47 father's name from the birth certificate. In the event that the putative father defaults or fails to
48 present or prosecute the issue of paternity, the trial court shall find the putative father to be the
49 biological father as a matter of law.

50 ~~After 60 days have elapsed, execution of the document may be challenged in court only~~
51 ~~upon the basis of fraud, duress, mistake, or excusable neglect. The burden of proof shall be on~~

1 ~~the challenging party, and the legal responsibilities, including child support obligations, of any~~
2 ~~signatory arising from the executed documents may not be suspended during the challenge~~
3 ~~except for good cause shown.~~

4 (a1) Notwithstanding the time limitations of G.S. 1A-1, Rule 60 of the North Carolina
5 Rules of Civil Procedure, or any other provision of law, an affidavit of parentage may be set
6 aside by a trial court after 60 days have elapsed only if:

7 (1) The affidavit of parentage was entered as the result of fraud, duress, mutual
8 mistake, or excusable neglect; and

9 (2) Genetic tests establish that the putative father is not the biological father of
10 the child.

11 The burden of proof in any motion to set aside an affidavit of parentage after 60 days allowed
12 for rescission shall be on the moving party. Child support responsibilities of the parties may not
13 be suspended while the motion is pending, except for good cause shown. Upon proper motion
14 alleging fraud, duress, mutual mistake, or excusable neglect, the court shall order the child's
15 mother, the child whose parentage is at issue, and the putative father to submit to genetic
16 paternity testing pursuant to G.S. 8-50.1(b1). If the court determines as a result of genetic
17 testing the putative father is not the biological father of the child and the affidavit of parentage
18 was entered as a result of fraud, duress, mutual mistake, or excusable neglect, the court may set
19 aside the affidavit of parentage and terminate all future child support obligations of the putative
20 father with regard to the minor child whose parentage is at issue. If the court sets aside an
21 affidavit of parentage pursuant to this section, no party may be required to reimburse past child
22 support paid on behalf of the child to the custodial parent, the State, or any other assignee of
23 child support. Any past due child support payment vested pursuant to G.S. 50-13.10, shall not
24 be affected by any order entered pursuant to this section. All vested child support arrears shall
25 remain due and owing.

26 (a2) A written agreement to support the child by periodic payments, which may include
27 provision for reimbursement for medical expenses incident to the pregnancy and the birth of the
28 child, accrued maintenance and reasonable expense of prosecution of the paternity action, when
29 acknowledged as provided herein, filed with, and approved by a judge of the district court at
30 any time, shall have the same force and effect as an order of support entered by that court, and
31 shall be enforceable and subject to modification in the same manner as is provided by law for
32 orders of the court in such cases. The written affidavit shall contain the social security number
33 of the person executing the affidavit. Voluntary agreements to support shall contain the social
34 security number of each of the parties to the agreement. The written affidavits and agreements
35 to support shall be sworn to before a certifying officer or notary public or the equivalent or
36 corresponding person of the state, territory, or foreign country where the affirmation,
37 acknowledgment, or agreement is made, and shall be binding on the person executing the same
38 whether the person is an adult or a minor. The child support enforcement agency shall ensure
39 that the mother and putative father are given oral and written notice of the legal consequences
40 and responsibilities arising from the signing of an affidavit of parentage and of any alternatives
41 to the execution of an affidavit of parentage. The mother shall not be excused from making the
42 affidavit on the grounds that it may tend to disgrace or incriminate her; nor shall she thereafter
43 be prosecuted for any criminal act involved in the conception of the child as to whose paternity
44 she attests.

45 (b) At any time after the filing with the district court of an affidavit of parentage, upon
46 the application of any interested party, the court or any judge thereof shall cause a summons
47 signed by him or by the clerk or assistant clerk of superior court, to be issued, requiring the
48 putative father to appear in court at a time and place named therein, to show cause, if any he
49 has, why the court should not enter an order for the support of the child by periodic payments,
50 which order may include provision for reimbursement for medical expenses incident to the
51 pregnancy and the birth of the child, accrued maintenance and reasonable expense of the action

1 under this subsection on the affidavit of parentage previously filed with said court. The court
2 may order the responsible parents in a IV-D establishment case to perform a job search, if the
3 responsible parent is not incapacitated. This includes IV-D cases in which the responsible
4 parent is a noncustodial mother or a noncustodial father whose affidavit of parentage has been
5 filed with the court or when paternity is not at issue for the child. The court may further order
6 the responsible parent to participate in the work activities, as defined in 42 U.S.C. § 607, as the
7 court deems appropriate. The amount of child support payments so ordered shall be determined
8 as provided in G.S. 50-13.4(c). The prior judgment as to paternity shall be res judicata as to that
9 issue and shall not be reconsidered by the court."

10 **SECTION 3.** This act becomes effective October 1, 2009, and applies to motions
11 to set aside paternity or motions to set aside affidavits of parentage on or after that date.