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

Sponsors: Representatives Glazier, Goodwin, Cleveland, Moore (Primary Sponsors); M. Alexander, Current, Faison, Jackson, Lucas, Mackey, Pierce, and Stevens.

Referred to: Judiciary II, if favorable, Appropriations.

February 26, 2009

A BILL TO BE ENTITLED

AN ACT ESTABLISHING A PROCESS TO SET ASIDE AN ORDER OF PATERNITY OR  
AN AFFIDAVIT OF PARENTAGE UNDER LIMITED CIRCUMSTANCES.

The General Assembly of North Carolina enacts:

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

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

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

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

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

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

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

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

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

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

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

(f) When a determination of paternity is pending in a IV-D case, the court shall enter a temporary order for child support upon motion and showing of clear, cogent, and convincing evidence of paternity. For purposes of this subsection, the results of blood or genetic tests shall constitute clear, cogent, and convincing evidence of paternity if the tests show that the



1 probability of the alleged parent's parentage is ninety-seven percent (97%) or higher. If  
2 paternity is not thereafter established, then the putative father shall be reimbursed the full  
3 amount of temporary support paid under the order.

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

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

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

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

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

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

34 "**§ 110-132. Affidavit of parentage and agreement to ~~support~~ support; motion to set aside**  
35 **affidavit of parentage.**

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

41 (1) 60 days of the date the document is executed, or

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

44 In order to rescind, a challenger must request the district court to order the rescission and to  
45 include in the order specific findings of fact that the request for rescission was filed with the  
46 clerk of court within 60 days of the signing of the document. The court must also find that all  
47 parties, including the child support enforcement agency, if appropriate, have been served in  
48 accordance with Rule 4 of the North Carolina Rules of Civil Procedure. In the event the court  
49 orders rescission and the putative father is thereafter found not to be the father of the child, then  
50 the clerk of court shall send a copy of the order of rescission to the State Registrar of Vital  
51 Statistics. Upon receipt of an order of rescission, the State Registrar shall remove the putative

1 father's name from the birth certificate. In the event that the putative father defaults or fails to  
2 present or prosecute the issue of paternity, the trial court shall find the putative father to be the  
3 biological father as a matter of law.

4 ~~After 60 days have elapsed, execution of the document may be challenged in court only~~  
5 ~~upon the basis of fraud, duress, mistake, or excusable neglect. The burden of proof shall be on~~  
6 ~~the challenging party, and the legal responsibilities, including child support obligations, of any~~  
7 ~~signatory arising from the executed documents may not be suspended during the challenge~~  
8 ~~except for good cause shown.~~

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

- 12 (1) The affidavit of parentage was entered as the result of fraud, duress, mutual  
13 mistake, or excusable neglect; and
- 14 (2) Genetic tests establish that the putative father is not the biological father of  
15 the child.

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

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

1 be prosecuted for any criminal act involved in the conception of the child as to whose paternity  
2 she attests.

3 (b) At any time after the filing with the district court of an affidavit of parentage, upon  
4 the application of any interested party, the court or any judge thereof shall cause a summons  
5 signed by him or by the clerk or assistant clerk of superior court, to be issued, requiring the  
6 putative father to appear in court at a time and place named therein, to show cause, if any he  
7 has, why the court should not enter an order for the support of the child by periodic payments,  
8 which order may include provision for reimbursement for medical expenses incident to the  
9 pregnancy and the birth of the child, accrued maintenance and reasonable expense of the action  
10 under this subsection on the affidavit of parentage previously filed with said court. The court  
11 may order the responsible parents in a IV-D establishment case to perform a job search, if the  
12 responsible parent is not incapacitated. This includes IV-D cases in which the responsible  
13 parent is a noncustodial mother or a noncustodial father whose affidavit of parentage has been  
14 filed with the court or when paternity is not at issue for the child. The court may further order  
15 the responsible parent to participate in the work activities, as defined in 42 U.S.C. § 607, as the  
16 court deems appropriate. The amount of child support payments so ordered shall be determined  
17 as provided in G.S. 50-13.4(c). The prior judgment as to paternity shall be res judicata as to that  
18 issue and shall not be reconsidered by the court."

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