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SENATE BILL 203  
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Short Title: Set Aside Paternity/Child Support.

(Public)

Sponsors:

Referred to:

March 7, 2011

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, AND TO  
4 ALLOW RELIEF FROM A CHILD SUPPORT ORDER WHEN THE OBLIGOR IS NOT  
5 THE CHILD'S FATHER.

6 The General Assembly of North Carolina enacts:

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

8 "**§ 49-14. Civil action to establish ~~paternity~~-paternity; ~~motion to set aside paternity~~.**

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

14 ...

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

18 (1) The paternity order was entered as the result of fraud, duress, mutual  
19 mistake, or excusable neglect.

20 (2) Genetic tests establish the putative father is not the biological father of the  
21 child.

22 The burden of proof in any motion to set aside an order of paternity shall be on the moving  
23 party. Upon proper motion alleging fraud, duress, mutual mistake, or excusable neglect, the  
24 court shall order the child's mother, the child whose parentage is at issue, and the putative  
25 father to submit to genetic paternity testing pursuant to G.S. 8-50.1(b1). If the court determines,  
26 as a result of genetic testing, the putative father is not the biological father of the child and the  
27 order of paternity was entered as a result of fraud, duress, mutual mistake, or excusable neglect,  
28 the court may set aside the order of paternity. Nothing in this subsection shall be construed to  
29 affect the presumption of legitimacy where a child is born to a mother and the putative father  
30 during the course of a marriage."

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

32 "**§ 110-132. Affidavit of parentage and agreement to ~~support~~-motion to set aside affidavit**  
33 **of parentage.**

34 (a) In lieu of or in conclusion of any legal proceeding instituted to establish paternity,  
35 the written affidavits of parentage executed by the putative father and the mother of the



1 dependent child shall constitute an admission of paternity and shall have the same legal effect  
2 as a judgment of paternity for the purpose of establishing a child support obligation, subject to  
3 the right of either signatory to rescind within the earlier of:

- 4 (1) 60 days of the date the document is executed, or
- 5 (2) The date of entry of an order establishing paternity or an order for the  
6 payment of child support.

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

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

23 (a1) Paternity established under subsection (a) of this section may be set aside in  
24 accordance with subsection (a2) of this section or in accordance with G.S. 50-13.13.

25 (a2) Notwithstanding the time limitations of G.S. 1A-1, Rule 60 of the North Carolina  
26 Rules of Civil Procedure, or any other provision of law, an affidavit of parentage may be set  
27 aside by a trial court after 60 days have elapsed if each of the following applies:

- 28 (1) The affidavit of parentage was entered as the result of fraud, duress, mutual  
29 mistake, or excusable neglect.
- 30 (2) Genetic tests establish that the putative father is not the biological father of  
31 the child.

32 The burden of proof in any motion to set aside an affidavit of parentage after 60 days allowed  
33 for rescission shall be on the moving party. Upon proper motion alleging fraud, duress, mutual  
34 mistake, or excusable neglect, the court shall order the child's mother, the child whose  
35 parentage is at issue, and the putative father to submit to genetic paternity testing pursuant to  
36 G.S. 8-50.1(b1). If the court determines, as a result of genetic testing, the putative father is not  
37 the biological father of the child and the affidavit of parentage was entered as a result of fraud,  
38 duress, mutual mistake, or excusable neglect, the court may set aside the affidavit of parentage.  
39 Nothing in this subsection shall be construed to affect the presumption of legitimacy where a  
40 child is born to a mother and the putative father during the course of a marriage.

41 (a3) A written agreement to support the child by periodic payments, which may include  
42 provision for reimbursement for medical expenses incident to the pregnancy and the birth of the  
43 child, accrued maintenance and reasonable expense of prosecution of the paternity action, when  
44 acknowledged as provided herein, filed with, and approved by a judge of the district court at  
45 any time, shall have the same force and effect as an order of support entered by that court, and  
46 shall be enforceable and subject to modification in the same manner as is provided by law for  
47 orders of the court in such cases. The written affidavit shall contain the social security number  
48 of the person executing the affidavit. Voluntary agreements to support shall contain the social  
49 security number of each of the parties to the agreement. The written affidavits and agreements  
50 to support shall be sworn to before a certifying officer or notary public or the equivalent or  
51 corresponding person of the state, territory, or foreign country where the affirmation,

1 acknowledgment, or agreement is made, and shall be binding on the person executing the same  
2 whether the person is an adult or a minor. The child support enforcement agency shall ensure  
3 that the mother and putative father are given oral and written notice of the legal consequences  
4 and responsibilities arising from the signing of an affidavit of parentage and of any alternatives  
5 to the execution of an affidavit of parentage. The mother shall not be excused from making the  
6 affidavit on the grounds that it may tend to disgrace or incriminate her; nor shall she thereafter  
7 be prosecuted for any criminal act involved in the conception of the child as to whose paternity  
8 she attests.

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

25 **SECTION 3.** Article 1 of Chapter 50 of the General Statutes is amended by adding  
26 the following new section to read:

27 "**§ 50-13.13. Motion or claim for relief from child support order based on finding of**  
28 **nonpaternity.**

29 (a) Notwithstanding G.S. 1A-1, Rule 60 of the North Carolina Rules of Civil Procedure,  
30 or any other provision of law, an individual who, as the father of a child, is required to pay  
31 child support under an order that was entered by a North Carolina court pursuant to Chapter 49,  
32 50, 52C, or 110 of the General Statutes, or under an agreement between the parties pursuant to  
33 G.S. 52-10.1 or otherwise, and that is subject to modification by a North Carolina court under  
34 applicable law may file a motion or claim seeking relief from a child support order as provided  
35 in this section.

36 (b) A motion or claim for relief under this section shall be filed as a motion or claim in  
37 the cause in the pending child support action, or as an independent civil action, and shall be  
38 filed within one year of the date the moving party knew or reasonably should have known that  
39 he was not the father of the child. The motion or claim shall be verified by the moving party  
40 and shall state all of the following:

- 41 (1) The basis, with particularity, on which the moving party believes that he is  
42 not the child's father.
- 43 (2) The moving party has not acknowledged paternity of the child or  
44 acknowledged paternity without knowing that he was not the child's  
45 biological father.
- 46 (3) The moving party has not adopted the child, has not legitimated the child  
47 pursuant to G.S. 49-10, 49-12, or 49-12.1, or is not the child's legal father  
48 pursuant to G.S. 49A-1.
- 49 (4) The moving party did not act to prevent the child's biological father from  
50 asserting his paternal rights regarding the child.

1       (c) The court may appoint a guardian ad litem pursuant to G.S. 1A-1, Rule 17, to  
2 represent the interest of the child in connection with a proceeding under this section.

3       (d) Notwithstanding G.S. 8-50.1(b1), the court shall, upon motion or claim of a party in  
4 a proceeding under this section, order the moving party, the child's mother, and the child to  
5 submit to genetic paternity testing if the court finds that there is good cause to believe that the  
6 moving party is not the child's father and that the moving party may be entitled to relief under  
7 this section. If genetic paternity testing is ordered, the provisions of G.S. 8-50.1(b1) shall  
8 govern the admissibility and weight of the genetic test results. The moving party shall pay the  
9 costs of genetic testing. If a party fails to comply with an order for genetic testing without good  
10 cause, the court may hold the party in civil or criminal contempt or impose appropriate  
11 sanctions under G.S. 1A-1, Rule 37, of the North Carolina Rules of Civil Procedure, or both.  
12 Nothing in this subsection shall be construed to require additional genetic paternity testing if  
13 paternity has been set aside pursuant to G.S. 49-14 or G.S. 110-132.

14       (e) The moving party's child support obligation shall be suspended while the motion or  
15 claim is pending before the court if the support is being paid on behalf of the child to the State,  
16 or any other assignee of child support, where the child is in the custody of the State or other  
17 assignee, or where the moving party is an obligor in a IV-D case as defined in G.S. 110-129(7).

18       The moving party's child support obligation shall not be suspended while the motion or  
19 claim is pending before the court if the support is being paid to the mother of the child.

20       (f) The court may grant relief from a child support order under this section if paternity  
21 has been set aside pursuant to G.S. 49-14 or G.S. 110-132, or if the moving party proves by  
22 clear and convincing evidence, and the court, sitting without a jury, finds both of the following:

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

25           (2) The moving party either (i) has not acknowledged paternity of the child or  
26 (ii) acknowledged paternity without knowing that he was not the child's  
27 biological father. For purposes of this section, 'acknowledging paternity'  
28 means that the moving party has done any of the following:

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

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

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

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

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

45       (h) If the court determines that the moving party has satisfied the requirements of this  
46 section, the court shall enter an order, including written findings of fact and conclusions of law,  
47 terminating the moving party's child support obligation regarding the child. The court may tax  
48 as costs to the mother of the child the expenses of genetic testing.

49       Any unpaid support due prior to the filing of the motion or claim is due and owing. If the  
50 court finds that the mother of the child used fraud, duress, or misrepresentation, resulting in the  
51 belief on the part of the moving party that he was the father of the child, the court may order

1 the mother of the child to reimburse any child support amounts paid and received by the mother  
2 after the filing of the motion or claim. The moving party has no right to reimbursement of past  
3 child support paid on behalf of the child to the State, or any other assignee of child support,  
4 where the child is in the custody of the State or other assignee, or where the moving party is an  
5 obligor in a IV-D case as defined in G.S. 110-129(7).

6 If the child was born in North Carolina and the moving party is named as the father on the  
7 child's birth certificate, 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 is granted under this  
9 subsection, a party may, to the extent otherwise provided by law, apply for modification of or  
10 relief from any judgment or order involving the moving party's paternity of the child.

11 (i) Any servicemember who is deployed on military orders, and is subject to the  
12 protections of the Servicemembers Civil Relief Act, shall have the period for filing a motion  
13 pursuant to subsection (b) of this section tolled during the servicemember's deployment. If the  
14 period remaining allowed for the filing of the motion following the servicemember's  
15 redeployment is less than 30 days, then the servicemember shall have 30 days for filing the  
16 motion."

17 **SECTION 4.** This act becomes effective January 1, 2012, and applies to motions  
18 or claims for relief filed on or after that date. Notwithstanding the provision in Section 3 of this  
19 act requiring motions or claims to be filed within one year of discovery that the moving party is  
20 not the father, any person who would otherwise be eligible to file a motion or claim may file a  
21 motion or claim pursuant to this act prior to January 1, 2013.