

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

H

D

HOUSE BILL 55  
PROPOSED COMMITTEE SUBSTITUTE H55-PCS30104-SA-3

Short Title: Relief from Incorrect Paternity Determination.

(Public)

Sponsors:

Referred to:

February 9, 2011

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 shall be filed as a motion in the cause in the  
pending child support action and shall be filed within one year of the date the moving party  
knew or reasonably should have known that he was not the father of the child. The motion shall  
be verified by the moving party and shall state all of the following:

(1) The basis, with particularity, on which the moving party believes that he is  
not the child's father.

(2) The moving party has not acknowledged paternity of the child or  
acknowledged paternity without knowing that he was not the child's  
biological father.

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

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

(c) The court may 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



\* H 5 5 - P C S 3 0 1 0 4 - S A - 3 \*

1 govern the admissibility and weight of the genetic test results. The moving party shall pay the  
2 costs of genetic testing. If a party fails to comply with an order for genetic testing without good  
3 cause, the court may hold the party in civil or criminal contempt or impose appropriate  
4 sanctions under G.S. 1A-1, Rule 37, of the North Carolina Rules of Civil Procedure, or both.

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

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

11 (f) The court may grant relief from a child support order under this section if the  
12 moving party proves by clear and convincing evidence, and the court, sitting without a jury,  
13 finds both of the following:

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

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

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

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

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

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

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

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

40 Any unpaid support due prior to the filing of the motion is due and owing. If the court finds  
41 that the mother of the child used fraud, duress, or misrepresentation, resulting in the belief  
42 on the part of the moving party that he was the father of the child, the court may order the mother  
43 of the child to reimburse any child support amounts paid and received by the mother after the  
44 filing of the motion. The moving party has no right to reimbursement of past child support paid  
45 on behalf of the child to the State, or any other assignee of child support, where the child is in  
46 the custody of the State or other assignee, or where the moving party is an obligor in a IV-D  
47 case as defined in G.S. 110-129(7).

48 If the child was born in North Carolina and the moving party is named as the father on the  
49 child's birth certificate, the court shall order the clerk of superior court to notify the State  
50 Registrar of the court's order pursuant to G.S. 130A-118(b)(2). If relief is granted under this

1 subdivision, a party may, to the extent otherwise provided by law, apply for modification of or  
2 relief from any judgment or order involving the moving party's paternity of the child."

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

4 **"§ 110-132. Affidavit of parentage and agreement to support.**

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

10 (1) 60 days of the date the document is executed, or

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

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

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

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

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

50 (b) At any time after the filing with the district court of an affidavit of parentage, upon  
51 the application of any interested party, the court or any judge thereof shall cause a summons

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

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