

GENERAL ASSEMBLY OF NORTH CAROLINA
1997 SESSION

S.L. 1997-215
SENATE BILL 162

AN ACT TO MAKE TECHNICAL, CLARIFYING, AND SIMILAR MINOR CHANGES TO THE ADOPTION LAWS AS FOUND IN CHAPTER 48 OF THE GENERAL STATUTES INVOLVING CERTIFICATION OF DOCUMENTS, NOTICE, PROCEDURES FOR REPORTS TO THE COURT, ACCEPTANCE OF RELINQUISHMENTS BY AGENCIES, INDEXING, CAPTIONS ON ADOPTION PETITIONS, AND STANDBY GUARDIANS; TO STANDARDIZE PROCEDURES FOR REQUESTING NEW BIRTH CERTIFICATES IN ALL ADOPTIONS; AND TO AMEND PROVISIONS FOR OBTAINING CERTIFICATION OF IDENTIFICATION FOR INDIVIDUALS OF FOREIGN BIRTH AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION; AND TO ALLOW FOR PREBIRTH RIGHT-TO-CONSENT DETERMINATION, CLARIFY WHEN COUNTY DEPARTMENTS OF SOCIAL SERVICES MUST DO PREPLACEMENT ASSESSMENTS, TO ADD CHILDREN TO THE LIST OF PERSONS WHO CAN GET COPIES OF BIRTH CERTIFICATES OF ADOPTees, TO EXTEND THE EFFECTIVE PERIOD OF PREPLACEMENT ASSESSMENTS TO EIGHTEEN MONTHS, TO PROVIDE THAT EXECUTION OF A RELINQUISHMENT DOES NOT TERMINATE THE DUTY OF SUPPORT, AND TO PERMIT ALL RELINQUISHMENTS TO BE RESCINDED BY MUTUAL AGREEMENT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 48-2-305 reads as rewritten:

"§ 48-2-305. Petition for adoption; additional documents.

At the time the petition is filed, the petitioner shall file or cause to be filed the following documents:

- (1) Any required affidavit of parentage executed pursuant to G.S. 48-3-206;
- (2) Any required consent or relinquishment that has been executed;
- (3) A certified copy of any court order terminating the rights and duties of a parent or a guardian of the adoptee;
- (4) A certified copy of any court order or pleading in a pending proceeding concerning custody of or visitation with the adoptee;
- (5) A copy of any required preplacement assessment certified by the agency that prepared it or an affidavit from the petitioner stating why the assessment is not available;

- (6) A ~~certified~~ copy of any document containing the information required under G.S. 48-3-205 concerning the health, social, educational, and genetic history of the adoptee and the adoptee's original family which the petitioner received before the placement or at any later time, certified by the person who prepared it, or if this document is not available, an affidavit stating the reason why it is not available;
- (7) Any signed copy of the form required by the Interstate Compact on the Placement of Children, G.S. 110-57.1, et seq., authorizing a minor to come into this State;
- (8) A writing that states the name of any individual whose consent is or may be required, but who has not executed a consent or a relinquishment or whose parental rights have not been legally terminated, and any fact or circumstance that may excuse the lack of consent or relinquishment; and
- (9) In an adoption pursuant to Article 4 of this Chapter, a copy of any agreement to release past-due child support payments.

The petitioner may also file any other document necessary or helpful to the court's determination."

Section 2. G.S. 48-2-401(d) reads as rewritten:

"(d) In the adoption of an adult, the petitioner shall also serve notice of the filing on any adult children of the prospective adoptive parent and any parent, spouse, or adult child of the adoptee who are listed in the petition to adopt."

Section 3. G.S. 48-2-403 reads as rewritten:

"§ 48-2-403. Notice of proceedings by clerk.

No later than five days after a petition is filed, the clerk of the court shall ~~give notice of the adoption proceeding by certified mail, return receipt requested, mail or otherwise deliver notice of the adoption proceeding to any agency that has undertaken but not yet completed a preplacement assessment and any agency ordered to make a report to the court pursuant to Part 5 of this Article.~~

Section 4. G.S. 48-2-502(b) reads as rewritten:

- "(b) The report must be in writing and contain:
- (1) An account of the petitioner's marital or family status, physical and mental health, home environment, property, income, and financial obligations; if there has been a preplacement assessment, the account may be limited to any changes since the filing of the preplacement assessment;
 - (2) All reasonably available nonidentifying information concerning the physical, mental, and emotional condition of the adoptee required by G.S. 48-3-205 which is not already included in the document prepared under that section;
 - (3) Copies of any court order, judgment, decree, or pending legal proceeding affecting the adoptee, the petitioner, or any child of the petitioner relevant to the welfare of the adoptee;

- (4) A list of the expenses, fees, or other charges incurred, paid, or to be paid in connection with the adoption that can reasonably be ascertained by the agency;
- (5) Any fact or circumstance known to the agency that raises a specific concern about whether the proposed adoption is contrary to the best interest of the adoptee because it poses a significant risk of harm to the well-being of the adoptee;
- (6) A finding by the agency concerning the suitability of the petitioner and the petitioner's home for the adoptee;
- (7) A recommendation concerning the granting of the petition; and
- (8) Such other information as may be required by rules adopted pursuant to subsection (c) of this section.

In an agency adoption, the report shall be written in such a way as to exclude all information that could reasonably be expected to lead directly to the identity of the adoptee at birth or any former parent or family member of the adoptee, and any copies of documents included pursuant to subdivision (3) of this subsection shall be redacted to exclude this information."

Section 5. (a) G.S. 48-2-503(a) reads as rewritten:

"(a) The agency shall complete a written report and file it with the court within 60 days after ~~receipt~~ the mailing or delivery of the order under G.S. 48-2-501 unless the court extends the time for filing. The agency shall have three additional days to complete and file the report if the order was mailed."

(b) G.S. 48-2-503(b) reads as rewritten:

"(b) If the agency identifies a specific concern about the suitability of the petitioner or the petitioner's home for the adoptee, the agency must file an interim report immediately, which must contain an account of the specific concern. The agency shall indicate in the final report whether its concerns have been satisfied and in what manner."

(c) G.S. 48-2-503 is amended by adding a new subsection to read:

"(b1) When an agency identifies a specific concern in a final report and the court extends the time for a final hearing or disposition to allow resolution of these concerns, the agency shall file a supplemental report indicating whether its concerns have been satisfied and in what manner."

(d) Subsection (a) of this section applies to reports to the court prepared in response to a notice under G.S. 48-2-403 mailed or delivered after the effective date of this act.

Section 6. (a) G.S. 48-2-604 reads as rewritten:

"§ 48-2-604. Denying petition to adopt a minor.

(a) If at any time between the filing of a petition to adopt a minor and the issuance of the final order completing the adoption it appears to the court that the minor should not be adopted by the petitioners or the petition should be dismissed for some other reason, the court may dismiss the proceeding.

(b) The court, before entering an order to dismiss the proceeding, shall give at least five days' notice of the motion to dismiss to the parties, to the agency that made the

report to the court, and to the Department of Human Resources. The parties and agency entitled to notice under this subsection, and the Department, shall be entitled to a hearing on the issue of dismissing the proceeding.

(c) If the court denies a ~~petition to adopt a minor, the petition~~, the custody of the minor shall revert to any agency or person having custody immediately before the filing of the petition. If the placement of the ~~child-minor~~ was a direct placement under Article 3 of this Chapter, the court shall notify the director of social services of the county in which the petition was filed of the dismissal, and the director of social services shall be responsible for taking appropriate action for the protection of the ~~child-minor~~."

(b) This section becomes effective October 1, 1997.

Section 7. (a) G.S. 48-3-702 reads as rewritten:

"§ 48-3-702. Procedures for relinquishment.

(a) A relinquishment executed by a parent or guardian must conform substantially to the requirements in this Part and must be signed and acknowledged under oath before an individual authorized to administer oaths or take acknowledgments.

(b) The provisions of G.S. 48-3-605(b), (c), (e), and (f), also apply to a relinquishment executed under this Part, ~~except that an individual before whom a relinquishment is signed and acknowledged shall also certify that an employee of the agency to which the minor is being relinquished signed a statement indicating the agency's willingness to accept the relinquishment.~~ Part.

(c) An agency that accepts a relinquishment shall furnish each parent or guardian who signs the relinquishment a letter or other writing indicating the agency's willingness to accept that person's relinquishment."

(b) This section applies to relinquishments executed on or after the effective date of this act.

Section 8. (a) G.S. 48-3-608(a) reads as rewritten:

"(a) A consent to the adoption of an infant who is in utero or is three months old or less at the time the consent is given may be revoked within 21 days following the day on which it is executed, inclusive of weekends and holidays. A consent to the adoption of any other minor may be revoked within seven days following the day on which it is executed, inclusive of weekends and holidays. If the final day of the revocation period falls on a weekend or North Carolina or federal holiday, then the revocation period extends to the next business day. The individual who gave the consent may revoke by giving written notice to the person specified in the consent. Notice may be given by personal delivery, overnight delivery service, or registered or certified mail, return receipt requested. If notice is given by mail, notice is deemed complete when it is deposited in the United States mail, postage prepaid, addressed to the person to whom consent was given at the address specified in the consent. If notice is given by overnight delivery service, notice is deemed complete on the date it is deposited with the service as shown by the receipt from the service, with delivery charges paid by the sender, addressed to the person to whom consent was given at the address specified in the consent."

(b) This section applies to notices given on or after the effective date of this act.

Section 9. (a) G.S. 48-9-102(a) reads as rewritten:

"(a) All records created or filed in connection with an adoption, except the decree of ~~adoption~~, adoption and the entry in the special proceedings index in the office of the clerk of court, and on file with or in the possession of the court, an agency, the State, a county, an attorney, or other provider of professional services, are confidential and may not be disclosed or used except as provided in this Chapter."

(b) G.S. 48-9-102(f) reads as rewritten:

"(f) The Division shall transmit a report of ~~the each~~ adoption ~~of a minor~~ and any name change to the State Registrar if the ~~minor~~ adoptee was born in this State, ~~or State~~. In the case of an adoptee who was not born in this State, the Division shall transmit the report and any name change to the appropriate official responsible for issuing birth certificates or their equivalent if the minor was not born in this State. equivalent."

(c) G.S. 48-9-102(g) reads as rewritten:

"(g) ~~In the adoption of an adult born in this State in which the name of the adoptee is changed, the clerk of superior court shall, within 10 days after the decree of adoption is entered, send the State Registrar a copy of the final order, any separate order of name change, and a report in a form acceptable to the State Registrar containing sufficient information for a new birth certificate. In the adoption of an adult who was not born in this State, the clerk shall transmit a copy of the final order and any other required information to the adoptee. In any adoption, the State Registrar may, in addition to receiving the report from the Division, request a copy of the final order and any separate order of name change directly from the clerk of court.~~"

(d) G.S. 48-2-303 reads as rewritten:

"§ 48-2-303. Caption of petition for adoption.

The caption of the petition shall be substantially as follows:

STATE OF NORTH CAROLINA
IN THE DISTRICT COURT
_____ COUNTY
BEFORE THE CLERK

*(Full name of petitioning father)

and

PETITION FOR ADOPTION

*(Full name of petitioning mother)

and

FOR THE ADOPTION OF

*(Full name of adoptee as used in proceeding) by which the adoptee is to be known if the adoption is granted)."

(e) Subsection (a) of this section is effective on and after July 1, 1996. The remainder of this section becomes effective October 1, 1997. Subsections (b) and (c) apply to final orders entered on or after the effective date of this act.

Section 10. (a) G.S. 48-2-601(a) reads as rewritten:

"(a) If it appears to the court that ~~the petition~~ a petition to adopt a minor is not contested, the court may dispose of the petition without a formal hearing."

(b) This section applies to petitions filed on or after the effective date.

Section 11. (a) G.S. 48-3-603(a) reads as rewritten:

"(a) Consent to an adoption of a minor is not required of a person or entity whose consent is not required under G.S. 48-3-601, or:

- (1) An individual whose parental rights and duties have been terminated under Article 24B of Chapter 7A of the General Statutes or by a court of competent jurisdiction in another state;
- (2) A man described in G.S. 48-3-601(2), other than an adoptive father, if (i) the man has been judicially determined not to be the father of the minor to be adopted, or (ii) another man has been judicially determined to be the father of the minor to be adopted;
- ~~(3) A parent for whose minor child a guardian has been appointed;~~
- (4) An individual who has relinquished parental rights or guardianship powers, including the right to consent to adoption, to an agency pursuant to Part 7 of this Article;
- (5) A man who is not married to the minor's birth mother and who, after the conception of the minor, has executed a notarized statement denying paternity or disclaiming any interest in the minor;
- (6) A deceased parent or the personal representative of a deceased parent's estate; or
- (7) An individual listed in G.S. 48-3-601 who has not executed a consent or a relinquishment and who fails to respond to a notice of the adoption proceeding within 30 days after the service of the notice."

(b) G.S. 48-3-201(d) reads as rewritten:

~~"(d) An agency having legal and physical custody of a minor may place the minor for adoption at any time after a relinquishment is executed, even if only one parent has executed a relinquishment pursuant to Part 7 of this Article or has had parental rights terminated, unless the other parent notifies the agency in writing of the parent's objections before the placement. The agency shall act promptly after accepting a relinquishment from one parent to obtain the consent or relinquishment of the other parent or to terminate the rights between the minor and the other parent pursuant to Article 24B of Chapter 7A of the General Statutes. An agency having legal and physical custody of a minor may place the minor for adoption at any time after a relinquishment is executed by anyone as permitted by G.S. 48-3-701. The agency may place the minor for adoption even if other consents are required before an adoption can be granted, unless an individual whose consent is required notifies the agency in writing of the individual's objections before the placement. The agency shall act promptly after accepting a relinquishment to obtain all other necessary consents, relinquishments, or~~

terminations of any guardian's authority pursuant to Chapter 35A of the General Statutes or parental rights pursuant to Article 24B of Chapter 7A of the General Statutes."

(c) G.S. 48-4-102 reads as rewritten:

"§ 48-4-102. Consent to adoption of stepchild.

Except under circumstances described in G.S. 48-3-603, a petition to adopt a minor stepchild may be granted only if consent to the adoption has been executed by the adoptee if 12 or more years of age; and

- (1) The adoptee's parents as described in G.S. 48-3-601; ~~or~~ and
- (2) Any guardian of the adoptee.

The consent of an incompetent parent may be given pursuant to the procedures in G.S. 48-3-602."

(d) G.S. 48-3-602 reads as rewritten:

"§ 48-3-602. Consent of incompetent parents.

If a parent as described in G.S. 48-3-601 has been adjudicated incompetent, then the court shall appoint a guardian ad litem for that parent ~~and~~ and, unless the child already has a guardian, a guardian ad litem for the child to make a full investigation as to whether the adoption should proceed. The investigation shall include an evaluation of the parent's current condition and any reasonable likelihood that the parent will be restored to competency, the relationship between the child and the incompetent parent, alternatives to adoption, and any other relevant fact or circumstance. If the court determines after a hearing on the matter that it will be in the best interest of the child for the adoption to proceed, the court shall order the guardian ad litem of the parent to execute a consent for that parent."

(e) G.S. 48-1-101(8) reads as rewritten:

- "(8) 'Guardian' means an individual, other than a parent, appointed by a clerk of court in North Carolina to exercise all of the powers conferred by ~~G.S. 35A-1241; G.S. 35A-1241,~~ including a standby guardian appointed under Article 21 of Chapter 35A of the General Statutes whose authority has actually commenced; and also means an individual, other than a parent, appointed in another jurisdiction according to the law of that jurisdiction who has the power to consent to adoption under the law of that jurisdiction."

Section 12. (a) G.S. 48-2-501 reads as rewritten:

"§ 48-2-501. Report to the court during proceeding for adoption of a minor.

(a) Whenever a petition for adoption of a minor is filed, the court shall order a report to the court made to assist the court to determine if the proposed adoption of the minor by the petitioner is in the minor's best interest.

(b) Consistent with G.S. 48-1-109, the court shall order the report to be prepared:

- (1) By the agency that placed the minor;
- (2) By the agency that made the preplacement assessment pursuant to Part 3 of Article 3 of this Chapter; or
- (3) By another agency.

(c) The court shall provide the individual who prepares the report with copies of:
~~(i) the petition to adopt; and (ii) the documents filed with it.~~

(1) The petition to adopt; and

(2) The documents filed with it.

(d) As an exception to this section, in any stepparent adoption under Article 4 of this Chapter in which the minor has lived with the stepparent for at least the two consecutive years immediately preceding the filing of the petition, the court may order a report, but it is not required to order a report unless the minor's consent is to be waived, the minor has revoked a consent, or both of the minor's parents are dead."

(b) G.S. 48-4-104 is repealed.

(c) This section becomes effective October 1, 1997.

Section 13. G.S. 130A-108 reads as rewritten:

"§ 130A-108. Certificate of identification for ~~child~~ individual of foreign birth.

In the case of an adopted ~~child~~ individual born in a foreign country and ~~having legal settlement in this State, residing in this State at the time of application,~~ the State Registrar shall, upon the presentation of a certified copy of the original birth certificate from the country of birth and a certified copy of the final order of adoption signed by the clerk of court or other appropriate official, prepare a certificate of identification for the ~~child~~ individual. The certificate shall contain the same information required by G.S. 48-9-107(a) for ~~children~~ individuals adopted in this State, except that the country of birth shall be specified in lieu of the state of birth."

Section 14. Part 2 of Article 2 of Chapter 48 is amended by adding a new section to read:

"§ 48-2-206. Prebirth determination of right to consent.

(a) Anytime after six months from the date of conception as reasonably determined by a physician, the biological mother, agency, or adoptive parents chosen by the biological mother may file a special proceeding with the clerk requesting the court to determine whether consent of the biological father is required. The biological father shall be served with notice of the intent of the biological mother to place the child for adoption, allowing the biological father 15 days after service to assert a claim that his consent is required.

(b) The notice required under subsection (a) of this section shall contain the special proceeding case caption and file number and shall be substantially similar to the following language:

'[Name of the biological mother], the biological mother, is expected to give birth to a child on or about [birth due date]. You have been identified as the biological father. It is the intention of the biological mother to place the child for adoption. It is her belief that your consent to the adoption is not required. If you believe your consent to the adoption of this child is required pursuant to G.S. 48-3-601, you must notify the court in writing no later than 15 days from the date you received this notice that you believe your consent is required. A copy of your notice to the court must also be sent to the person or agency that sent you this notice. If you fail to notify the court within 15 days

that you believe your consent is required, the court will rule that your consent is not required.'

(c) If the biological father fails to respond within the time required, the court shall enter an order that the biological father's consent is not required for the adoption. A biological father who fails to respond within the time required under this section is not entitled to notice under G.S. 48-2-401(c) of an adoption petition filed within three months of the birth of the minor.

(d) If the biological father notifies the court within 15 days of his receipt of the notice required by subsection (a) of this section that he believes his consent to the adoption is required, on motion of the petitioner, the court shall hold a hearing to determine whether the consent of the biological father is required. Promptly on receipt of the petitioner's motion, the court shall set a date for the hearing no earlier than 60 days nor later than 70 days after the biological father received the notice required by subsection (a) of this section and shall notify the petitioner and the biological father of the date, time, and place of the hearing. The notice of hearing to the biological father shall include a statement substantially similar to the following:

'To the biological father named above: You have told the court that you believe your consent is necessary for the adoption of the child described in the notice sent to you earlier. This hearing is being held to decide whether your consent is in fact necessary. Before the date of the hearing, you must have taken steps under G.S. 48-3-601 to establish that your consent is necessary or this court will decide that your consent is not necessary and the child can be adopted without it.'

During the hearing, the court may take such evidence as necessary and enter an order determining whether or not the consent of the biological father is necessary.

(e) The manner of service under this section shall be the same as set forth in G.S. 48-2-402.

(f) The jurisdiction provisions of Article 6A of Chapter 1 of the General Statutes and the venue provisions of Article 7 of Chapter 1 of the General Statutes rather than the provisions of Part 1 of this Article apply to proceedings under this section.

(g) Computation of periods of time provided for in this section shall be calculated as set forth in G.S. 1A-1, Rule 6.

(h) Transfer under G.S. 1-272 and appeal under G.S. 1-279.1 shall be as for an adoption proceeding.

(i) A determination by the court under this section that the consent of the biological father is not required shall only apply to an adoption petition filed within three months of the birth of the minor."

Section 15. G.S. 48-3-302(e) reads as rewritten:

"(e) If an individual requesting a preplacement assessment has identified a prospective adoptive child and has otherwise been unable to obtain a preplacement assessment, the county department of social services must, upon request, prepare or contract for the preparation of the preplacement assessment. As used in this subsection, 'unable to obtain a preplacement assessment' includes the inability to obtain a preplacement assessment at the fee the county department of social services is permitted

to charge the individual. Except as provided in this subsection, no agency is required to conduct a preplacement assessment unless it agrees to do so."

Section 16. G.S. 48-3-601(2)b.4. reads as rewritten:

- "4. Before the earlier of the filing of the petition, petition or the date of a hearing under G.S. 48-2-206, has acknowledged his paternity of the minor and
- I. Is obligated to support the minor under written agreement or by court order;
 - II. Has provided, in accordance with his financial means, reasonable and consistent payments for the support of the biological mother during or after the term of pregnancy, or the support of the minor, or both, which may include the payment of medical expenses, living expenses, or other tangible means of support, and has regularly visited or communicated, or attempted to visit or communicate with the biological mother during or after the term of pregnancy, or with the minor, or with both; or
 - III. After the minor's birth but before the minor's placement for adoption or the mother's relinquishment, has married or attempted to marry the mother of the minor by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid; or".

Section 17. G.S. 48-3-603(a) is amended by adding a new subdivision to read:

"(8) An individual notified under G.S. 48-2-206 who does not respond in a timely manner or whose consent is not required as determined by the court."

Section 18. G.S. 48-9-107(c) reads as rewritten:

"(c) The State Registrar shall seal the original certificate of birth and all records in the possession of that office pertaining to the adoption. These records shall not be unsealed except as provided in this Article. The State Registrar shall provide certified typed copies or abstracts of the new certificate of birth of an adoptee prepared pursuant to subsection (a) of this section to the adoptee, the adoptee's children, the adoptive parents, and the adoptee's spouse, brothers, and sisters. For purposes of this subsection, 'parent', 'brother', and 'sister' shall mean the adoptee's adoptive parent, brother, or sister and shall not mean a former parent, brother, or sister."

Section 19. (a) G.S. 48-3-301(a)(1) reads as rewritten:

"(1) Has been completed or updated within the ~~12~~18 months immediately preceding the placement; and".

(b) This section applies to placements made on or after the effective date of this act.

Section 19.1. (a) G.S. 48-3-704 reads as rewritten:

"§ 48-3-704. Content of relinquishment; optional provisions.

In addition to the mandatory provisions listed in G.S. 48-3-703, a relinquishment may also state that the relinquishment may be revoked upon notice by the agency that an adoption by a specific prospective adoptive parent, named or described in the relinquishment is not completed, or if the agency and the person relinquishing the minor mutually agree to rescind the relinquishment before placement with a prospective adoptive parent occurs. completed."

(b) G.S. 48-3-705(c) reads as rewritten:

"(c) A relinquishment terminates:

- (1) Any right and duty of the individual who executed the relinquishment with respect to the legal and physical custody of the ~~minor~~; minor.
- (2) The right to consent to the minor's ~~adoption~~; and adoption.
- (3) ~~The duty to support the minor.~~"

(c) G.S. 48-3-707(a) reads as rewritten:

"(a) A relinquishment shall become void ~~if~~; if:

- (1) Before ~~before~~ the entry of the adoption decree, the individual who executed the relinquishment establishes by clear and convincing evidence that it was obtained by fraud or duress.
- (2) Before placement with a prospective adoptive parent occurs, the agency and the person relinquishing the minor agree to rescind the relinquishment."

(d) This section applies to relinquishments executed on or after August 1, 1997.

Section 20. Sections 14, 16, and 17 become effective October 1, 1997. Except as otherwise provided, the remaining sections of this act are effective when the act becomes law.

In the General Assembly read three times and ratified this the 9th day of June, 1997.

s/ Dennis A. Wicker
President of the Senate

s/ Harold J. Brubaker
Speaker of the House of Representatives

s/ James B. Hunt, Jr.
Governor

Approved 5:11 p.m. this 19th day of June, 1997