

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001**

**SESSION LAW 2001-150
SENATE BILL 499**

AN ACT TO AMEND THE LAWS RELATING TO ADOPTION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 48-1-101 reads as rewritten:

"§ 48-1-101. Definitions.

In this Chapter, the following definitions apply:

- (1) "Adoptee" means an individual who is adopted, is placed for adoption, or is the subject of a petition for adoption properly filed with the court.
- (2) "Adoption" means the creation by law of the relationship of parent and child between two individuals.
- (3) "Adult" means an individual who has attained 18 years of age, or if under the age of 18, is either married or has been emancipated under the applicable State law.
- (3a) "Adoption facilitator" means an individual or a nonprofit entity that assists biological parents in locating and evaluating prospective adoptive parents without charge.
- (4) "Agency" means a public or private association, corporation, institution, or other person or entity that is licensed or otherwise authorized by the law of the jurisdiction where it operates to place minors for adoption. "Agency" also means a county department of social services in this State.
- (4a) "Agency identified adoption" means a placement where an agency has agreed to place the minor with a prospective adoptive parent selected by the parent or guardian.
- (5) "Child" means a son or daughter, whether by birth or adoption.
- (5a) "Criminal history" means a county, State, or federal criminal history of conviction or a pending indictment of a crime, whether a misdemeanor or a felony, that bears upon an individual's fitness to have responsibility for the safety and well-being of children, including the following North Carolina crimes contained in any of the following Articles of Chapter 14 of the General Statutes: Article 6, Homicide; Article 7A, Rape and Kindred Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 26, Offenses Against Public Morality and Decency; Article 27, Prostitution; Article 39, Protection of Minors; Article 40, Protection of the Family; and Article 59, Public Intoxication. Such crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5. In addition to the North Carolina crimes listed in this subdivision, such crimes also include similar crimes under federal law or under the laws of other states.

- (6) "Department" means the North Carolina Department of Health and Human Services.
- (7) "Division" means the Division of Social Services of the Department.
- (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, 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.
- (9) "Legal custody" of an individual means the general right to exercise continuing care of and control over the individual as authorized by law, with or without a court order, and:
 - a. Includes the right and the duty to protect, care for, educate, and discipline the individual;
 - b. Includes the right and the duty to provide the individual with food, shelter, clothing, and medical care; and
 - c. May include the right to have physical custody of the individual.
- (10) "Minor" means an individual under 18 years of age who is not an adult.
- (11) "Party" means a petitioner, adoptee, or any person whose consent to an adoption is necessary under this Chapter but has not been obtained.
- (12) "Physical custody" means the physical care of and control over an individual.
- (13) "Placement" means transfer of physical custody of a minor to the selected prospective adoptive parent. Placement may be either:
 - a. Direct placement by a parent or the guardian of the minor; or
 - b. Placement by an agency.
- (14) "Preplacement assessment" means a document, whether prepared before or after placement, that contains the information required by G.S. 48-3-303 and any rules adopted by the Social Services Commission.
- (15) "Relinquishment" means the voluntary surrender of a minor to an agency for the purpose of adoption.
- (16) "Report to the court" means a document prepared in accordance with G.S. 48-2-501, et seq.
- (17) "State" means a state as defined in G.S. 12-3(11).
- (18) "Stepparent" means an individual who is the spouse of a parent of a child, but who is not a legal parent of the child."

SECTION 2. G.S. 48-2-304(b) reads as rewritten:

- "(b) Any petition to adopt a minor shall also state:
 - (1) The length of time the adoptee has been in the physical custody of the ~~petitioner;~~petitioner.
 - (2) If the adoptee is not in the physical custody of the petitioner, the reason why the petitioner does not have physical custody and the date and manner in which the petitioner intends to acquire ~~custody;~~custody.
 - (3) That the petitioner has the resources, including those available under a subsidy for an adoptee with special needs, to provide for the care and support of the ~~adoptive;~~adoptive.
 - (4) Any information required by the Uniform Child-Custody Jurisdiction and Enforcement Act, Article 2 of Chapter 50A of the General Statutes, which is known to the ~~petitioner;~~petitioner.

- (5) That any required assessment has been completed or updated within the ~~12~~18 months before the ~~placement; and~~ placement.
- (6) That all necessary consents, relinquishments, or terminations of parental rights have been obtained and will be filed as additional documents with the petition; or that the necessary consents, relinquishments, and terminations of parental rights that have been obtained will be filed as additional documents with the petition, along with the document listing the names of any other individuals whose consent, relinquishment, or termination of rights may be necessary but has not been obtained."

SECTION 3. 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;~~ under G.S. 48-3-206.
- (2) Any required consent or relinquishment that has been ~~executed;~~ executed.
- (3) A certified copy of any court order terminating the rights and duties of a parent or a guardian of the ~~adoptee;~~ adoptee.
- (4) A certified copy of any court order or pleading in a pending proceeding concerning custody of or visitation with the ~~adoptee;~~ adoptee.
- (5) A copy of any required preplacement assessment certified by the agency that prepared it and any certificate of service required by G.S. 48-3-307 or an affidavit from the petitioner stating why the assessment is not ~~available;~~ available.
- (6) A 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;~~ available.
- (7) Any signed copy of the form required by the Interstate Compact on the Placement of Children, Article 38 of Chapter 7B of the General Statutes, authorizing a minor to come into this ~~State;~~ 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~~ relinquishment.
- (9) In an adoption pursuant to Article 4 of this Chapter, a copy of any agreement to release past-due child support payments.
- (10) Any consent to an agency by a placing parent and adopting parents to release identifying information under G.S. 48-9-109.

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

SECTION 4. G.S. 48-2-402(c) reads as rewritten:

"(c) In an agency placement under Article 3 of this Chapter, the agency or other proper person shall file a petition to terminate the parental rights of an unknown parent or possible parent instead of serving notice under ~~this subsection;~~ subsection (b) of this section, and the court shall stay any adoption proceeding already ~~filed;~~ filed, except that nothing in this subsection shall require that the agency or other proper person file a petition to terminate the parental rights of any known or possible parent who has been

served notice as provided under G.S. 1A-1, Rule 4(j)(1) of the Rules of Civil Procedure."

SECTION 5. G.S. 48-2-603(a) reads as rewritten:

"(a) At the hearing on, or disposition of, a petition to adopt a minor, the court shall grant the petition upon finding by a preponderance of the evidence that the adoption will serve the best interest of the adoptee, and ~~that upon finding the following:~~

- (1) At least 90 days have elapsed since the filing of the petition for adoption, unless the court for cause waives this ~~requirement;~~ requirement.
- (2) The adoptee has been in the physical custody of the petitioner for at least 90 days, unless the court for cause waives this ~~requirement;~~ requirement.
- (3) Notice of the filing of the petition has been served on any person entitled to receive notice under Part 4 of this ~~Article;~~ Article.
- (4) Each necessary consent, relinquishment, waiver, or judicial order terminating parental rights, has been obtained and filed with the court and the time for revocation has ~~expired;~~ expired.
- (5) Any assessment required by this Chapter has been filed with and considered by the ~~court;~~ court.
- (6) If applicable, the requirements of the Interstate Compact on the Placement of Children, Article 38 of Chapter 7B of the General Statutes, have been ~~met;~~ met.
- (7) Any motion to dismiss the proceeding has been ~~denied;~~ denied.
- (8) Each petitioner is a suitable adoptive ~~parent;~~ parent.
- (9) Any accounting and affidavit required under G.S. 48-2-602 has been reviewed by the court, and the court has denied, modified, or ordered reimbursement of any payment or disbursement that violates Article 10 or is unreasonable when compared with the expenses customarily incurred in connection with an ~~adoption;~~ adoption.
- (10) The petitioner has received information about the adoptee and the adoptee's biological family if required by ~~G.S. 48-3-205; and~~ G.S. 48-3-205.
- (10a) Any certificate of service required by G.S. 48-3-307 has been filed.
- (11) There has been substantial compliance with the provisions of this Chapter."

SECTION 6. G.S. 48-3-202(b) reads as rewritten:

"(b) Information about a prospective adoptive parent ~~must~~ shall be provided to a parent or guardian by the prospective adoptive parent, the prospective adoptive parent's attorney, or a person or entity assisting the parent or guardian. ~~This~~ Except as otherwise provided in this subsection, this information ~~must~~ shall include the preplacement assessment ~~or assessments~~ prepared pursuant to Part 3 of this Article, and may include additional information requested by the parent or guardian. The agency preparing the preplacement assessment may redact from the preplacement assessment provided to a placing parent or guardian detailed information reflecting the prospective adoptive parent's financial account balances and detailed information about the prospective adoptive parent's extended family members, including surnames, names of employers, names of schools attended, social security numbers, telephone numbers and addresses, and other similarly detailed information about extended family members obtained under G.S. 48-3-303."

SECTION 7. G.S. 48-3-203 reads as rewritten:

"§ 48-3-203. Agency placement adoption.

(a) An agency may acquire legal and physical custody of a minor for purposes of adoptive placement only by means of a relinquishment pursuant to Part 7 of this Article or by a court order terminating the rights and duties of a parent or guardian of the minor.

(b) An agency shall give any ~~individual~~ individual, upon ~~request~~ request, a written statement of the services it ~~provides and of~~ provides, its procedure for selecting a prospective adoptive parent for a minor, including the role of the minor's parent or guardian in the selection ~~process~~ process, and the procedure for an agency identified adoption and the disclosures permitted under G.S. 48-9-109. This statement ~~must~~ shall include a schedule of any fee or expenses charged or required to be paid by the agency and a summary of the provisions of this Chapter that pertain to the requirements and consequences of a relinquishment and to the selection of a prospective adoptive parent.

(c) An agency may notify the parent when a placement has occurred and when an adoption decree is issued.

(d) ~~The selection of a prospective adoptive parent for a minor shall be made by the agency on the basis of a preplacement assessment.~~ An agency may place a minor for adoption only with an individual for whom a favorable preplacement assessment has been prepared. Placement shall be made as follows:

(1) If the agency has agreed to place the minor with the prospective adoptive parent selected by the parent or guardian, the minor shall be placed with the individual selected by the parent or guardian.

(2) If the agency has not agreed to place the minor with the prospective adoptive parent selected by the parent or guardian, the minor shall be placed with the prospective adoptive parent selected by the agency on the basis of the preplacement assessment. The selection may not be delegated, but may be based on criteria requested by a parent who relinquishes the child to the agency.

(d1) A minor who is in the custody or placement responsibility of a county department of social services shall not be placed with a selected prospective adoptive parent prior to the completion of an investigation of the individual's criminal history pursuant to G.S. 48-3-309 or G.S. 131D-10.3A and, based on the criminal history, a determination as to the individual's fitness to have responsibility for the safety and well-being of children.

(e) In addition to the authority granted in G.S. 131D-10.5, the Social Services Commission may adopt rules for placements by agencies consistent with the purposes of this Chapter.

(f) An agency may release identifying information as provided in G.S. 48-9-104.

SECTION 8. G.S. 48-3-303(c) is amended by adding a new subdivision to read:

"(c) The preplacement assessment ~~must~~ shall, after a reasonable investigation, report on the following about the individual being assessed:

(12) The agency preparing the preplacement assessment may redact from the preplacement assessment provided to a placing parent or guardian detailed information reflecting the prospective adoptive parent's financial account balances and detailed information about the prospective adoptive parent's extended family members, including surnames, names of employers, names of schools attended, social security numbers, telephone numbers and addresses, and other similarly detailed information about extended family members obtained under subsections (b) and (c) of this section.

SECTION 9. G.S. 48-3-307 is amended by adding a new subsection to read:

"(c) A prospective adoptive parent shall file or cause to be filed a certificate indicating that the prospective adoptive parent has delivered a copy of the assessment to the parent or guardian who placed the minor for adoption."

SECTION 10. G.S. 48-3-608 reads as rewritten:

"§ 48-3-608. **Revocation of consent.**

(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~~ infant who is in utero or any 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) In a direct placement, if:

- (1) A preplacement assessment is required, and
- (2) Placement occurs before the preplacement assessment is given to the parent or guardian who is placing the minor,

then that individual's time under subsection (a) of this section to revoke any consent previously given shall be either five business days after the date the individual receives the preplacement assessment or the remainder of the time provided in subsection (a) of this section, whichever is longer. The date of receipt is the earlier of the date of actual receipt or the date established pursuant to G.S. 48-3-307.

(c) If a person who has physical custody places the minor with the prospective adoptive parent and thereafter revokes a consent pursuant to this section, the prospective adoptive parent shall, immediately upon request, return the minor to that person. The revocation restores the right to physical custody and any right to legal custody to the person who placed the minor and divests the prospective adoptive parent of any right to legal or physical custody and any further responsibility for the care and support of the minor. In any subsequent proceeding, the court shall award reasonable attorneys' fees to the person who revoked if the prospective adoptive parent fails upon request to return the minor.

(d) If a person other than a person described in subsection (c) of this section revokes a consent pursuant to this section and this person's consent is required, the adoption cannot proceed until another consent is obtained or the person's parental rights are terminated. The person who revoked consent is not thereby entitled to physical custody of the minor. If the minor whose consent is required revokes consent, the county department of social services shall be notified for appropriate action.

(e) A second consent to adoption by the same adoptive parents is irrevocable."

SECTION 11. G.S. 48-3-706 reads as rewritten:

"§ 48-3-706. Revocation of relinquishments.

(a) ~~A relinquishment of an infant who is in utero or is three months old or less at the time the relinquishment is executed may be revoked within 21 days following the day on which it is executed, inclusive of weekends and holidays.~~ A relinquishment of any ~~other~~ infant who is in utero or any 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 period falls on a weekend or a North Carolina or federal holiday, then the revocation period extends to the next business day. The individual who gave the relinquishment may revoke by giving written notice to the agency to which the relinquishment was given. 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 agency at the agency's address as given in the relinquishment.

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 agency at the agency's address as given in the relinquishment.

(b) If a person who has physical custody relinquishes a minor and thereafter revokes a relinquishment pursuant to this section, the agency shall upon request return the minor to that person. The revocation restores the right to physical custody and any right to legal custody to the person who relinquished the minor and divests the agency of any right to legal or physical custody and any further responsibility for the care and support of the minor. In any subsequent proceeding, the court may award the person who revoked reasonable attorneys' fees from a prospective adoptive parent with whom the minor was placed who refuses to return the minor and from the agency if the agency fails to cooperate in securing the minor's return.

(c) If a person other than a person described in subsection (b) of this section revokes a relinquishment pursuant to this section and this person's consent is required, the agency may not give consent for the adoption and the adoption cannot proceed until another relinquishment or a consent is obtained or parental rights are terminated. The person who revoked the relinquishment is not thereby entitled to physical custody of the minor.

(d) A second relinquishment for placement with the same adoptive parent selected by the agency and agreed upon by the person executing the relinquishment, or a second general relinquishment for placement by the agency with any adoptive parent selected by the agency, is irrevocable."

SECTION 12. G.S. 48-9-104 reads as rewritten:

"§ 48-9-104. Release of identifying information.

~~No~~Except as provided in G.S. 48-9-109(2), no person or entity shall release from any records retained and sealed under this Article the name, address, or other information that reasonably could be expected to lead directly to the identity of an adoptee, an adoptive parent of an adoptee, an adoptee's parent at birth, or an individual who, but for the adoption, would be the adoptee's sibling or grandparent, except upon order of the court for cause pursuant to G.S. 48-9-105."

SECTION 13. G.S. 48-9-109 reads as rewritten:

"§ 48-9-109. Certain disclosures authorized.

Nothing in this Article shall be interpreted or construed to ~~prevent~~prevent:

- (1) ~~an~~An employee of a court, agency, or any other person from:
 - (1) ~~a.~~ a. Inspecting permanent, confidential, or sealed records, other than records maintained by the State Registrar, for the purpose of discharging any obligation under this ~~Chapter~~Chapter.
 - (2) ~~b.~~ b. Disclosing the name of the court where a proceeding for adoption occurred, or the name of an agency that placed an adoptee, to an individual described in G.S. 48-9-104 who can verify his or her ~~identity~~identity.
 - (3) ~~c.~~ c. Disclosing or using information contained in permanent and sealed records, other than records maintained by the State Registrar, for statistical or other research purposes as long as the disclosure will not result in identification of a person who is the subject of the information and subject to any further conditions the Department may reasonably impose.
- (2) In agency placements, a parent or guardian placing a child for adoption and the adopting parents from authorizing an agency to release information or from releasing information to each other that could reasonably be expected to lead directly to the identity of an adoptee, an adoptive parent of an adoptee, or an adoptee's placing parent or guardian. The consent to the release of identifying information shall be in writing and signed prior to the adoption by any placing parent or

guardian and the adopting parents and acknowledged under oath in the presence of an individual authorized to administer oaths or take acknowledgments. Any consent to release identifying information shall be filed under G.S. 48-2-305."

SECTION 14. G.S. 48-10-101 reads as rewritten:

"§ 48-10-101. Prohibited activities in placement.

(a) No one other than a person or entity specified in G.S. 48-3-201 may place a minor for adoption. No one other than a person or entity specified in G.S. 48-3-201, or an adoption facilitator, may solicit potential adoptive parents for children in need of adoption. No one other than an agency or an adoption facilitator, or an individual with a completed preplacement assessment that contains a finding that the individual is suitable to be an adoptive parent or that individual's immediate family, may solicit for adoption a potential adoptee.

(b) No one other than a county department of social services, an adoption facilitator, or an agency licensed by the Department in this State may advertise in any periodical or newspaper, or by radio, television, or other public medium, that any person or entity will place or accept a child for adoption.

(b1) Notwithstanding subsections (a) and (b) of this section, this Article shall not prohibit a person from advertising that the person desires to adopt. This subsection shall apply only to a person with a current completed preplacement assessment finding that person suitable to be an adoptive parent. The advertisement may be published only in a periodical or newspaper or on radio, television, cable television, or the Internet. The advertisement shall include a statement that (i) the person has a completed preplacement assessment finding that person suitable to be an adoptive parent, (ii) identifies the name of the agency that completed the preplacement assessment, and (iii) identifies the date the preplacement assessment was completed. Any advertisement under this subsection may state whether the person is willing to provide lawful expenses as permitted by G.S. 48-10-103.

(c) A person who violates ~~subsection (a) or (b)~~ subsection (a), (b), or (b1) of this section is guilty of a Class 1 misdemeanor.

(d) The district court may enjoin any person from violating this section."

SECTION 15. This act becomes effective November 1, 2001. Section 4 applies to adoptions in which the petition is pending or filed on or after that date. Sections 3, 5, 7, 9, 12, and 13 apply to adoptions in which the petition is filed on or after that date. Sections 6 and 8 apply to preplacement assessments prepared on or after that date. Section 10 applies to consents executed on or after that date. Section 11 applies to relinquishments executed on or after that date. Section 14 applies to advertising published on or after that date.

In the General Assembly read three times and ratified this the 21st day of May, 2001.

s/ Marc Basnight
President Pro Tempore of the Senate

s/ James B. Black
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 11:26 a.m. this 31st day of May, 2001