GENERAL ASSEMBLY OF NORTH CAROLINA
1993 SESSION

CHAPTER 733
SENATE BILL 1712

AN ACT TO CONFORM NORTH CAROLINA LAWS REGARDING THE ESTABLISHMENT OF CHILD PATERNITY TO CERTAIN FEDERAL LAW REQUIREMENTS BY AMENDING THE NORTH CAROLINA LAWS OF EVIDENCE RELATING TO THE MANNER OF CONTESTING BLOOD OR GENETIC MARKER TESTS IN THE TRIAL OF CIVIL ACTIONS IN WHICH THE QUESTION OF PARENTAGE ARISES; BY PROVIDING FOR THE ENTRY OF JUDGMENT BY DEFAULT IN PATERNITY ACTIONS WHEN THE DEFENDANT FAILS TO FILE ANSWER; AND, BY GIVING FULL FAITH AND CREDIT TO OUT-OF-STATE PATERNITY DETERMINATIONS REGARDLESS OF METHOD OF ESTABLISHMENT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 8-50.1 reads as rewritten:

"**§ 8-50.1. Competency of blood tests; jury charge; taxing of expenses as costs.**

(a) In the trial of any criminal action or proceeding in any court in which the question of parentage arises, regardless of any presumptions with respect to parentage, the court before whom the matter may be brought, upon motion of the State or the defendant, shall order that the alleged-parent defendant, the known natural parent, and the child submit to any blood tests and comparisons which have been developed and adapted for purposes of establishing or disproving parentage and which are reasonably accessible to the alleged-parent defendant, the known natural parent, and the child. The results of those blood tests and comparisons, including the statistical likelihood of the alleged parent's parentage, if available, shall be admitted in evidence when offered by a duly qualified, licensed practicing physician, duly qualified immunologist, duly qualified geneticist, or other duly qualified person. Upon receipt of a motion and the entry of an order under the provisions of this subsection, the court shall proceed as follows:

(1) Where the issue of parentage is to be decided by a jury, where the results of those blood tests and comparisons are not shown to be inconsistent with the results of any other blood tests and comparisons, and where the results of those blood tests and comparisons indicate that the alleged-parent defendant cannot be the natural parent of the child, the jury shall be instructed that if they believe that the witness presenting the results testified truthfully as to those results, and if they believe that the tests and comparisons were conducted properly, then it will be their duty to decide that the alleged-parent is not the natural

parent; whereupon, the court shall enter the special verdict of not guilty; and

(2) By requiring the State or defendant, as the case may be, requesting the blood tests and comparisons pursuant to this subsection to initially be responsible for any of the expenses thereof and upon the entry of a special verdict incorporating a finding of parentage or nonparentage, by taxing the expenses for blood tests and comparisons, in addition to any fees for expert witnesses allowed per G.S. 7A-314 whose testimonies supported the admissibility thereof, as costs in accordance with G.S. 7A-304; G.S. Chapter 6, Article 7; or G.S. 7A-315, as applicable.

(b) Repealed by Session Laws 1993, c. 333, s. 2.

(b1) In the trial of any civil action in which the question of parentage arises, the court shall, on motion of a party, order the mother, the child, and the alleged father-defendant to submit to one or more blood or genetic marker tests, to be performed by a duly certified physician or other expert. The court shall require the person requesting the blood or genetic marker tests to pay the costs of the tests. The court may, in its discretion, tax as part of costs the expenses for blood or genetic marker tests and comparisons. Verified documentary evidence of the chain of custody of the blood specimens obtained pursuant to this subsection shall be competent evidence to establish the chain of custody. ~~The testing expert's completed and certified report of the results and conclusions of the paternity blood test or genetic marker test is admissible as evidence without additional testimony by the expert if the laboratory in which the expert performed the test is accredited for parentage testing by the American Association of Blood Banks. Accreditation may be established by verified statement or reference to published sources. Any person contesting the results of a blood or genetic marker test has the right to subpoena the testing expert pursuant to the Rules of Civil Procedure.~~ Any party objecting to or contesting the procedures or results of the blood or genetic marker tests shall file with the court written objections setting forth the basis for the objections and shall serve copies thereof upon all other parties not less than 10 days prior to any hearing at which the results may be introduced into evidence. The person contesting the results of the blood or genetic marker tests has the right to subpoena the testing expert pursuant to the Rules of Civil Procedure. If no objections are filed within the time and manner prescribed, the test results are admissible as evidence of paternity without the need for foundation testimony or other proof of authenticity or accuracy. The results of the blood or genetic marker tests shall have the following effect:

(1) If the court finds that the conclusion of all the experts, as disclosed by the evidence based upon the test, is that the probability of the alleged parent's parentage is less than eighty-five percent (85%), the alleged parent is presumed not to be the parent and the evidence shall be admitted. This presumption may be rebutted only by clear, cogent, and convincing evidence;

(2) If the experts disagree in their findings or conclusions, the question of paternity shall be submitted upon all the evidence;

(3) If the tests show that the alleged parent is not excluded and that the probability of the alleged parent's parentage is between eighty-five percent (85%) and ninety-seven percent (97%), this evidence shall be admitted by the court and shall be weighed with other competent evidence;

(4) If the experts conclude that the genetic tests show that the alleged parent is not excluded and that the probability of the alleged parent's parentage is ninety-seven percent (97%) or higher, the alleged parent is presumed to be the parent and this evidence shall be admitted. This presumption may be rebutted only by clear, cogent, and convincing evidence."

Sec. 2. Article 9 of Chapter 110 of the General Statutes is amended by adding a new section to read:

"**§ 110-132.1. Paternity determination by another state entitled to full faith and credit.**

A paternity determination made by another state:

(1) In accordance with the laws of that state, and

(2) By any means that is recognized in that state as establishing paternity shall be entitled to full faith and credit in this State."

Sec. 3. G.S. 1A-1, Rule 55(b), reads as rewritten:

"(b) Judgment. – Judgment by default may be entered as follows:

(1) By the Clerk. – When the plaintiff's claim against a defendant is for a sum certain or for a sum which can by computation be made certain, the clerk upon request of the plaintiff and upon affidavit of the amount due shall enter judgment for that amount and costs against the defendant, if he has been defaulted for failure to appear and if he is not an infant or incompetent person. A verified pleading may be used in lieu of an affidavit when the pleading contains information sufficient to determine or compute the sum certain.

In all cases wherein, pursuant to this rule, the clerk enters judgment by default upon a claim for debt which is secured by any pledge, mortgage, deed of trust or other contractual security in respect of which foreclosure may be had, or upon a claim to enforce a lien for unpaid taxes or assessments under G.S. 105-414, the clerk may likewise make all further orders required to consummate foreclosure in accordance with the procedure provided in Article 29A of Chapter 1 of the General Statutes, entitled 'Judicial Sales.'

(2) By the Judge. – In all other cases the party entitled to a judgment by default shall apply to the judge therefor; but no judgment by default shall be entered against an infant or incompetent person unless represented in the action by a guardian **ad litem** or other such representative who has appeared therein. If the party against whom judgment by default is sought has appeared in the action, he (or, if appearing by representative, his representative) shall be served with

written notice of the application for judgment at least three days prior to the hearing on such application. If, in order to enable the judge to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to take an investigation of any other matter, the judge may conduct such hearings or order such references as he deems necessary and proper and shall accord a right of trial by jury to the parties when and as required by the Constitution or by any statute of North Carolina. If the plaintiff seeks to establish paternity under Article 3 of Chapter 49 of the General Statutes and the defendant fails to appear, the judge shall enter judgment by default."

Sec. 4. This act becomes effective August 1, 1994, and applies to civil actions commenced on or after that date.

In the General Assembly read three times and ratified this the 11th day of July, 1994.

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Dennis A. Wicker
President of the Senate

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Daniel Blue, Jr.
Speaker of the House of Representatives