

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H

D

HOUSE BILL 147
Committee Substitute Favorable 3/6/13
PROPOSED SENATE COMMITTEE SUBSTITUTE H147-CSSA-54 [v.1]

6/12/2013 12:48:27 PM

Short Title: Amend Adoption Laws.

(Public)

Sponsors:

Referred to:

February 25, 2013

A BILL TO BE ENTITLED
AN ACT TO AMEND VARIOUS LAWS PERTAINING TO ADOPTION.
The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7B-909 reads as rewritten:

"§ 7B-909. Review of agency's plan for placement.

(a) The director of social services or the director of the licensed private child-placing agency shall promptly notify the clerk to calendar the case for review of the department's or agency's plan for the juvenile at a session of court scheduled for the hearing of juvenile matters if the juvenile is in the custody of the department or agency and has not become the subject of a decree of adoption within six months following relinquishment of the juvenile for adoption by a parent, guardian, or guardian ad litem under the provisions of Part 7 of Article 3 of Chapter 48 of the General Statutes.~~in any case where:~~

(1) ~~One parent has surrendered a juvenile for adoption under the provisions of Part 7 of Article 3 of Chapter 48 of the General Statutes and the termination of parental rights proceedings have not been instituted against the nonsurrendering parent within six months of the surrender by the other parent, or~~

(2) ~~Both parents have surrendered a juvenile for adoption under the provisions of Part 7 of Article 3 of Chapter 48 of the General Statutes and that juvenile has not been placed for adoption within six months from the date of the more recent parental surrender.~~

(b) Repealed by 2007-276, s. 6, effective October 1, 2007.

(b1) If the court finds on motion of a department of social services or licensed child-placing agency that a consent or relinquishment for adoption necessary for the juvenile to be adopted cannot be obtained, and that no further steps are being taken to terminate the parental rights of the parent from whom consent or relinquishment has not been obtained, the court may order, upon finding that it is in the juvenile's best interest, that any relinquishment for adoption signed by a parent who has surrendered the child for adoption shall be voided pursuant to G.S. 48-3-707(a)(4). Before voiding any relinquishment under this subsection, the court shall require the county department of social services or licensed child-placing agency to give at least 15 days' notice to the relinquishing parent whose rights will be restored. The relinquishing parent shall have the right to be heard on (i) whether the relinquishment should be voided and (ii) the parent's plan to provide for the juvenile if the relinquishment is voided. If after due diligence the relinquishing parent cannot be located, the notice of hearing shall be deposited in the United States mail, return receipt requested, and sent to the address of the



* H 1 4 7 - C S S A - 5 4 - V - 1 *

parent given in the relinquishment. The date of receipt of the notice is deemed the date of delivery or last attempted delivery.

(c) Notification of the court under this section shall be by a petition for review or motion for review, if the court is exercising jurisdiction over the juvenile. ~~The petition shall set forth the circumstances necessitating the review under subsection (a) of this section.~~ The review shall be conducted within 30 days following the filing of the petition for review unless the court shall otherwise direct. The court shall conduct reviews every six months until the juvenile is the subject of a decree of adoption. However, further reviews are not required after the voiding of a relinquishment under subsection (b1) of this section. The initial review and all subsequent ~~reviews~~ reviews, except a review hearing under subsection (b1) of this section, shall be conducted pursuant to G.S. 7B-908. Any individual whose parental rights have been terminated or who has relinquished the juvenile for adoption under the provisions of Part 7 of Article 3 of Chapter 48 of the General Statutes shall not be considered a party to the review unless an appeal of the order terminating parental rights is pending, and a court has stayed the order pending the appeal."

SECTION 2. G.S. 48-2-204 reads as rewritten:

"§ 48-2-204. Death of a joint petitioner or stepparent pending final decree.

(a) When spouses have petitioned jointly to adopt and one spouse dies before entry of a final decree, the adoption may ~~nevertheless~~ proceed in the names of both spouses. ~~The~~ Upon completion of the adoption, the name of the deceased spouse shall be entered as one of the adoptive parents on the new birth certificate prepared pursuant to Article 9 of this Chapter, and for Chapter. For purposes of inheritance, testate or intestate, the adoptee shall be treated as a child of the ~~deceased~~ deceased spouse.

(b) When a stepparent who has petitioned to adopt dies before entry of a final decree, the adoption may proceed in the name of the petitioning stepparent if the court causes to be mailed to any individual who executed a consent to adoption a notice advising that the petitioning stepparent has died and the individual may, within 15 days from the date the individual receives notice, request a hearing on the adoption. Notice is complete when mailed to the individual at the address given in the consent. Upon completion of the adoption, the name of the petitioning stepparent shall be entered as one of the adoptee's parents on the new birth certificate prepared in accordance with Article 9 of this Chapter. For purposes of inheritance, testate or intestate, the adoptee shall be treated as a child of the deceased stepparent."

SECTION 3. G.S. 48-2-207(a) reads as rewritten:

"(a) If any individual who is described in G.S. 48-3-601 or entitled to notice under G.S. 48-2-401(c)(3) is served with notice of the filing of the petition in accordance with G.S. 48-2-402 and fails to respond within the time specified in the notice, the court, upon motion by the petitioner, shall enter an order under G.S. 48-3-603(a)(7) that the individual's consent is not required for the adoption."

SECTION 4. G.S. 48-2-302 reads as rewritten:

"§ 48-2-302. ~~Time for filing petition.~~ Concurrent petitions to adopt and terminate parental rights.

(a) Repealed by Session Laws 2012-16, s. 1, effective October 1, 2012.

(b) ~~If a petition is not filed in accordance with subsection (a) of this section, any person may notify the county department of social services for appropriate action.~~

(c) A petition for adoption may be filed concurrently with a petition to terminate parental rights."

SECTION 5. G.S. 48-2-305 reads as rewritten:

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

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

- (1) Any required affidavit of parentage executed under 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 ~~and any certificate of service required by G.S. 48-3-307~~ the assessment or an affidavit from the petitioner stating why the assessment is not 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.
- (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, or any statement required by G.S. 48-2-304(c) describing the circumstances of any noncompliance.
- (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.
- (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.
- (11) A certificate as required by G.S. 48-3-307(c), if the person who placed the minor executes a consent before receiving a copy of the preplacement assessment.
- (12) A certified copy of any judgment of conviction of a crime specified under G.S. 48-3-603(a)(9) establishing that an individual's consent to adoption is not required.

Any document required under this section that is available to the petitioner when the petition is filed shall be filed with the petition. Any document required under this section that is not available when the petition is filed shall be filed as the document becomes available. The petitioner may also file any other document necessary or helpful to the court's determination."

SECTION 6. G.S. 48-2-401(c)(3) reads as rewritten:

"(c) In the adoption of a minor, the petitioner shall also serve notice of the filing on each of the following:

...

- (3) A man who to the actual knowledge of the petitioner claims to be or is named as the biological or possible biological father of the minor, and any biological or possible biological fathers who are unknown or whose whereabouts are unknown, but notice need not be served upon a man who has executed a consent, a relinquishment, or a notarized statement denying paternity or disclaiming any interest in the minor, a man whose parental rights have been legally terminated or who has been judicially determined not to be the minor's ~~parent, parent,~~ a man whose consent to the adoption is not required under G.S. 48-3-603(a)(9) due to his conviction of a specified

1 crime, or, provided the petition is filed within three months of the birth of
2 the minor, a man whose consent to the adoption has been determined not to
3 be required under G.S. 48-2-206.

4"

5 **SECTION 7.** G.S. 48-3-603(a) reads as rewritten:

6 **"§ 48-3-603. Persons whose consent is not required.**

7 (a) Consent to an adoption of a minor is not required of a person or entity whose
8 consent is not required under G.S. 48-3-601, ~~or~~ or any of the following:

9 (1) An individual whose parental rights and duties have been terminated under
10 Article 11 of Chapter 7B of the General Statutes or by a court of competent
11 jurisdiction in another ~~state~~; state.

12 (2) A man described in G.S. 48-3-601(2), other than an adoptive father, if (i) the
13 man has been judicially determined not to be the father of the minor to be
14 adopted, or (ii) another man has been judicially determined to be the father
15 of the minor to be ~~adopted~~; adopted.

16 (3) Repealed by Session Laws 1997-215, s. 11(a).

17 (4) An individual who has relinquished parental rights or guardianship powers,
18 including the right to consent to adoption, to an agency pursuant to Part 7 of
19 this ~~Article~~; Article.

20 (5) A man who is not married to the minor's birth mother and who, after the
21 conception of the minor, has executed a notarized statement denying
22 paternity or disclaiming any interest in the ~~minor~~; minor.

23 (6) A deceased parent or the personal representative of a deceased parent's
24 ~~estate~~; estate.

25 (7) An individual listed in G.S. 48-3-601 who has not executed a consent or a
26 relinquishment and who fails to respond to a notice of the adoption
27 proceeding within 30 days after the service of the notice.

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

30 (9) An individual whose actions resulted in a conviction under
31 ~~G.S. 14-27.2~~ G.S. 14-27.2, G.S. 14-27.2A, or G.S. 14-27.3 and the
32 conception of the minor to be adopted.

33 (b) The court may issue an order dispensing with the consent ~~of~~ of the following:

34 (1) A guardian or an agency that placed the minor upon a finding that the
35 consent is being withheld contrary to the best interest of the ~~minor~~; or minor.

36 (2) A minor 12 or more years of age upon a finding that it is not in the best
37 interest of the minor to require the consent."

38 **SECTION 8.** G.S. 48-3-605(c) reads as rewritten:

39 "(c) An individual before whom a consent is signed and acknowledged under subsection
40 (a) of this section shall certify in writing that to the best of the individual's knowledge or belief,
41 the parent, guardian, or minor to be adopted executing the ~~consent~~; consent has met each of the
42 following:

43 (1) Read, or had read to him or her, and understood the ~~consent~~; consent.

44 (2) Signed the consent ~~voluntarily~~; voluntarily.

45 (3) ~~Received or was offered a copy of the consent; and~~ Been given an original or
46 a copy of his or her fully executed consent.

47 (4) ~~Was~~ Been advised that ~~counselling~~ counseling services may be available
48 through county departments of social services or licensed child-placing
49 agencies."

50 **SECTION 9.** G.S. 48-3-606 reads as rewritten:

51 **"§ 48-3-606. Content of consent; mandatory provisions.**

1 A consent required from a minor to be adopted, a parent, or a guardian under G.S. 48-3-601
2 must be in writing and ~~state~~state each of the following:

- 3 (1) The date and place of the execution of the ~~consent~~consent.
- 4 (2) The name, date of birth, and permanent address of the individual executing
5 the ~~consent~~consent.
- 6 (3) The date of birth or the expected delivery date, the sex, and the name of the
7 minor to be adopted, if ~~known~~known.
- 8 (4) That the individual executing the document is voluntarily consenting to the
9 transfer of legal and physical custody to, and the adoption of the minor to be
10 adopted by, the identified prospective adoptive ~~parent~~parent.
- 11 (5) The name of a person and an address where any notice of revocation may be
12 ~~sent~~sent.
- 13 (6) That the individual executing the document understands that after the
14 consent is signed and acknowledged in accord with the procedures set forth
15 in G.S. 48-3-605, it may be revoked in accord with G.S. 48-3-608, but that it
16 is otherwise final and irrevocable and may not be withdrawn or set aside
17 except under a circumstance set forth in ~~G.S. 48-3-609~~G.S. 48-3-609.
- 18 (7) That the consent shall be valid and binding and is not affected by any oral or
19 separate written agreement between the individual executing the consent and
20 the adoptive ~~parent~~parent.
- 21 (8) That the individual executing the consent has not received or been promised
22 any money or anything of value for the consent, and has not received or been
23 promised any money or anything of value in relation to the adoption of the
24 child except for lawful payments that are itemized on a schedule attached to
25 the ~~consent~~consent.
- 26 (9) That the individual executing the consent understands that when the
27 adoption is final, all rights and obligations of the adoptee's former parents or
28 guardian with respect to the adoptee will be extinguished, and every aspect
29 of the legal relationship between the adoptee and the former parent or
30 guardian will be ~~terminated~~terminated.
- 31 (10) The name and address of the court, if known, in which the petition for
32 adoption has been or will be ~~filed~~filed.
- 33 (11) That the individual executing the consent waives notice of any proceeding
34 for ~~adoption~~adoption.
- 35 (12) If the individual executing the document is the minor to be adopted or the
36 person placing the minor for adoption, a statement that the adoption shall be
37 by a specific named adoptive ~~parent~~parent.
- 38 (13) If the individual executing the document is the person placing the minor for
39 adoption, that the individual executing the consent has provided the
40 prospective adoptive parent, or the prospective adoptive parent's attorney,
41 with the written document required by ~~G.S. 48-3-205~~and G.S. 48-3-205.
- 42 (14) That the person executing the consent has:
 - 43 a. ~~Received or been offered an unsigned copy of the consent;~~
 - 44 b. Been advised that ~~counseling~~counseling services may be available
45 through county departments of social services or licensed
46 child-placing agencies; and
 - 47 c. Been advised of the right to employ independent legal counsel."

48 **SECTION 10.** G.S. 48-3-702 reads as rewritten:

49 **"§ 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)~~, and (f), also apply to a relinquishment executed under this Part.

(b1) An individual before whom a relinquishment is signed and acknowledged under subsection (a) of this section shall certify in writing that to the best of the individual's knowledge or belief, the parent, guardian, or minor to be adopted executing the relinquishment has met each of the following:

(1) Read, or had read to him or her, and understood the relinquishment.

(2) Signed the relinquishment voluntarily.

(3) Been given an original or copy of his or her fully executed relinquishment.

(4) Been advised that counseling services are available through the agency to which the relinquishment is given.

(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."

SECTION 11. G.S. 48-3-703 reads as rewritten:

"§ 48-3-703. Content of relinquishment; mandatory provisions.

~~(a)~~ A relinquishment executed by a parent or guardian under G.S. 48-3-701 must be in writing and ~~state:~~state the following:

(1) The date and place of the execution of the ~~relinquishment;~~relinquishment.

(2) The name, date of birth, and permanent address of the individual executing the ~~relinquishment;~~relinquishment.

(3) The date of birth or the expected delivery date, the sex, and the name of the minor, if ~~known;~~known.

(4) The name and address of the agency to ~~whom~~which the minor is being ~~relinquished;~~relinquished.

(5) That the individual voluntarily consents to the permanent transfer of legal and physical custody of the minor to the agency for the purposes of adoption, and

a. The placement of the minor for adoption with a prospective adoptive parent selected by the agency; or

b. The placement of the minor for adoption with a prospective adoptive parent selected by the agency and agreed upon by the individual executing the ~~relinquishment;~~relinquishment.

(6) That the individual executing the relinquishment understands that after the relinquishment is signed and acknowledged in the manner provided in G.S. 48-3-702, it may be revoked in accord with G.S. 48-3-706 but that it is otherwise final and irrevocable except under the circumstances set forth in ~~G.S. 48-3-707;~~G.S. 48-3-707.

(7) That the relinquishment shall be valid and binding and shall not be affected by any oral or separate written agreement between the individual executing the consent and the ~~agency;~~agency.

(8) That the individual executing the relinquishment understands that when the adoption is final, all rights and duties of the individual executing the relinquishment with respect to the minor will be extinguished and all other aspects of the legal relationship between the minor child and the parent will be ~~terminated;~~terminated.

(9) That the individual executing the relinquishment has not received or been promised any money or anything of value for the relinquishment of the

1 minor, and has not received or been promised any money or anything of
2 value in relation to the relinquishment or the adoption of the minor except
3 for lawful payments that are itemized on a schedule attached to the
4 ~~relinquishment~~;relinquishment.

5 (10) That the individual executing the relinquishment waives notice of any
6 proceeding for ~~adoption~~;adoption.

7 (11) That the individual executing the relinquishment has provided the agency
8 with the written document required by G.S. 48-3-205, or that the individual
9 has provided the agency with signed releases that will permit the agency to
10 compile the information required by ~~G.S. 48-3-205~~; and G.S. 48-3-205.

11 (12) That the individual executing the relinquishment has:

12 a. ~~Received or been offered an unsigned copy of the relinquishment~~;

13 b. Been advised that counseling services are available through the
14 agency to which the relinquishment is given; and

15 c. Been advised of the right to employ independent legal counsel."

16 **SECTION 12.** G.S. 48-3-707(a) reads as rewritten:

17 "(a) A relinquishment shall become void if any of the following occur:

18 (1) Before the entry of the adoption decree, the individual who executed the
19 relinquishment establishes by clear and convincing evidence that it was
20 obtained by fraud or duress.

21 (2) Before placement with a prospective adoptive parent occurs, the agency and
22 the person relinquishing the minor agree to rescind the relinquishment.

23 (3) After placement with a prospective adoptive parent occurs, but before the
24 entry of the adoption decree, the agency, the person relinquishing the minor,
25 and the prospective adoptive parent agree to rescind the relinquishment.

26 (4) Upon motion of a county department of social services or licensed
27 child-placing agency under G.S. 7B-909, the court orders that the
28 relinquishment shall be voided based on a finding that another consent or
29 relinquishment necessary for an adoption cannot be obtained and that no
30 further steps are being taken to terminate the parental rights of the parent
31 from whom the consent or relinquishment has not been obtained."

32 **SECTION 13.** G.S. 50-13.1(a) reads as rewritten:

33 "(a) Any parent, relative, or other person, agency, organization or institution claiming
34 the right to custody of a minor child may institute an action or proceeding for the custody of
35 such child, as hereinafter provided. Any person whose actions resulted in a conviction under
36 ~~G.S. 14-27.2~~G.S. 14-27.2, G.S. 14-27.2A, or G.S. 14-27.3 and the conception of the minor
37 child may not claim the right to custody of that minor child. Unless a contrary intent is clear,
38 the word "custody" shall be deemed to include custody or visitation or both."

39 **SECTION 14.** This act is effective when it becomes law.