

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

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SENATE BILL 499*
Judiciary I Committee Substitute Adopted 4/24/01
House Committee Substitute Favorable 5/14/01

Short Title: Amend Adoption Laws.

(Public)

Sponsors:

Referred to:

March 19, 2001

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A BILL TO BE ENTITLED
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

1 responsibility for the safety and well-being of children, including the
2 following North Carolina crimes contained in any of the following
3 Articles of Chapter 14 of the General Statutes: Article 6, Homicide;
4 Article 7A, Rape and Kindred Offenses; Article 8, Assaults; Article
5 10, Kidnapping and Abduction; Article 13, Malicious Injury or
6 Damage by Use of Explosive or Incendiary Device or Material; Article
7 26, Offenses Against Public Morality and Decency; Article 27,
8 Prostitution; Article 39, Protection of Minors; Article 40, Protection of
9 the Family; and Article 59, Public Intoxication. Such crimes also
10 include possession or sale of drugs in violation of the North Carolina
11 Controlled Substances Act, Article 5 of Chapter 90 of the General
12 Statutes, and alcohol-related offenses such as sale to underage persons
13 in violation of G.S. 18B-302 or driving while impaired in violation of
14 G.S. 20-138.1 through G.S. 20-138.5. In addition to the North Carolina
15 crimes listed in this subdivision, such crimes also include similar
16 crimes under federal law or under the laws of other states.

17 (6) "Department" means the North Carolina Department of Health and
18 Human Services.

19 (7) "Division" means the Division of Social Services of the Department.

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

28 (9) "Legal custody" of an individual means the general right to exercise
29 continuing care of and control over the individual as authorized by
30 law, with or without a court order, and:

31 a. Includes the right and the duty to protect, care for, educate, and
32 discipline the individual;

33 b. Includes the right and the duty to provide the individual with
34 food, shelter, clothing, and medical care; and

35 c. May include the right to have physical custody of the
36 individual.

37 (10) "Minor" means an individual under 18 years of age who is not an
38 adult.

39 (11) "Party" means a petitioner, adoptee, or any person whose consent to an
40 adoption is necessary under this Chapter but has not been obtained.

41 (12) "Physical custody" means the physical care of and control over an
42 individual.

- 1 (13) "Placement" means transfer of physical custody of a minor to the
2 selected prospective adoptive parent. Placement may be either:
3 a. Direct placement by a parent or the guardian of the minor; or
4 b. Placement by an agency.
5 (14) "Preplacement assessment" means a document, whether prepared
6 before or after placement, that contains the information required by
7 G.S. 48-3-303 and any rules adopted by the Social Services
8 Commission.
9 (15) "Relinquishment" means the voluntary surrender of a minor to an
10 agency for the purpose of adoption.
11 (16) "Report to the court" means a document prepared in accordance with
12 G.S. 48-2-501, et seq.
13 (17) "State" means a state as defined in G.S. 12-3(11).
14 (18) "Stepparent" means an individual who is the spouse of a parent of a
15 child, but who is not a legal parent of the child."

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

17 "(b) Any petition to adopt a minor shall also state:

- 18 (1) The length of time the adoptee has been in the physical custody of the
19 ~~petitioner;~~petitioner.
20 (2) If the adoptee is not in the physical custody of the petitioner, the
21 reason why the petitioner does not have physical custody and the date
22 and manner in which the petitioner intends to acquire ~~custody;~~custody.
23 (3) That the petitioner has the resources, including those available under a
24 subsidy for an adoptee with special needs, to provide for the care and
25 support of the ~~adoptee;~~adoptee.
26 (4) Any information required by the Uniform Child-Custody Jurisdiction
27 and Enforcement Act, Article 2 of Chapter 50A of the General
28 Statutes, which is known to the ~~petitioner;~~petitioner.
29 (5) That any required assessment has been completed or updated within
30 the ~~12~~18 months before the ~~placement;~~ and placement.
31 (6) That all necessary consents, relinquishments, or terminations of
32 parental rights have been obtained and will be filed as additional
33 documents with the petition; or that the necessary consents,
34 relinquishments, and terminations of parental rights that have been
35 obtained will be filed as additional documents with the petition, along
36 with the document listing the names of any other individuals whose
37 consent, relinquishment, or termination of rights may be necessary but
38 has not been obtained."

39 **SECTION 3.** G.S. 48-2-305 reads as rewritten:

40 **"§ 48-2-305. Petition for adoption; additional documents.**

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

- 1 (1) Any required affidavit of parentage executed ~~pursuant to G.S.~~
2 ~~48-3-206;~~under G.S. 48-3-206.
- 3 (2) Any required consent or relinquishment that has been
4 ~~executed;~~executed.
- 5 (3) A certified copy of any court order terminating the rights and duties of
6 a parent or a guardian of the ~~adopte;~~adoptee.
- 7 (4) A certified copy of any court order or pleading in a pending
8 proceeding concerning custody of or visitation with the
9 ~~adopte;~~adoptee.
- 10 (5) A copy of any required preplacement assessment certified by the
11 agency that prepared it and any certificate of service required by G.S.
12 48-3-307 or an affidavit from the petitioner stating why the assessment
13 is not ~~available;~~available.
- 14 (6) A copy of any document containing the information required under
15 G.S. 48-3-205 concerning the health, social, educational, and genetic
16 history of the adoptee and the adoptee's original family which the
17 petitioner received before the placement or at any later time, certified
18 by the person who prepared it, or if this document is not available, an
19 affidavit stating the reason why it is not ~~available;~~available.
- 20 (7) Any signed copy of the form required by the Interstate Compact on the
21 Placement of Children, Article 38 of Chapter 7B of the General
22 Statutes, authorizing a minor to come into this ~~State;~~State.
- 23 (8) A writing that states the name of any individual whose consent is or
24 may be required, but who has not executed a consent or a
25 relinquishment or whose parental rights have not been legally
26 terminated, and any fact or circumstance that may excuse the lack of
27 consent or ~~relinquishment;~~ and relinquishment.
- 28 (9) In an adoption pursuant to Article 4 of this Chapter, a copy of any
29 agreement to release past-due child support payments.
- 30 (10) Any consent to an agency by a placing parent and adopting parents to
31 release identifying information under G.S. 48-9-109.

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

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

35 "(c) In an agency placement under Article 3 of this Chapter, the agency or other
36 proper person shall file a petition to terminate the parental rights of an unknown parent
37 or possible parent instead of serving notice under ~~this subsection;~~ subsection (b) of this
38 section, and the court shall stay any adoption proceeding already ~~filed;~~ filed, except that
39 nothing in this subsection shall require that the agency or other proper person file a
40 petition to terminate the parental rights of any known or possible parent who has been
41 served notice as provided under G.S. 1A-1, Rule 4(j)(1) of the Rules of Civil
42 Procedure."

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

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

5 (1) At least 90 days have elapsed since the filing of the petition for
6 adoption, unless the court for cause waives this~~—requirement;~~
7 requirement.

8 (2) The adoptee has been in the physical custody of the petitioner for at
9 least 90 days, unless the court for cause waives this
10 ~~requirement;~~requirement.

11 (3) Notice of the filing of the petition has been served on any person
12 entitled to receive notice under Part 4 of this ~~Article;~~Article.

13 (4) Each necessary consent, relinquishment, waiver, or judicial order
14 terminating parental rights, has been obtained and filed with the court
15 and the time for revocation has ~~expired;~~expired.

16 (5) Any assessment required by this Chapter has been filed with and
17 considered by the ~~court;~~court.

18 (6) If applicable, the requirements of the Interstate Compact on the
19 Placement of Children, Article 38 of Chapter 7B of the General
20 Statutes, have been ~~met;~~met.

21 (7) Any motion to dismiss the proceeding has been ~~denied;~~denied.

22 (8) Each petitioner is a suitable adoptive ~~parent;~~parent.

23 (9) Any accounting and affidavit required under G.S. 48-2-602 has been
24 reviewed by the court, and the court has denied, modified, or ordered
25 reimbursement of any payment or disbursement that violates Article 10
26 or is unreasonable when compared with the expenses customarily
27 incurred in connection with an ~~adoption;~~adoption.

28 (10) The petitioner has received information about the adoptee and the
29 adoptee's biological family if required by ~~G.S. 48-3-205; and~~G.S.
30 48-3-205.

31 (10a) Any certificate of service required by G.S. 48-3-307 has been filed.

32 (11) There has been substantial compliance with the provisions of this
33 Chapter."

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

35 "(b) Information about a prospective adoptive parent ~~must~~shall be provided to a
36 parent or guardian by the prospective adoptive parent, the prospective adoptive parent's
37 attorney, or a person or entity assisting the parent or guardian. ~~This~~Except as otherwise
38 provided in this subsection, this information ~~must~~shall include the preplacement
39 assessment ~~or assessments~~ prepared pursuant to Part 3 of this Article, and may include
40 additional information requested by the parent or guardian. The agency preparing the
41 preplacement assessment may redact from the preplacement assessment provided to a
42 placing parent or guardian detailed information reflecting the prospective adoptive

1 parent's financial account balances and detailed information about the prospective
2 adoptive parent's extended family members, including surnames, names of employers,
3 names of schools attended, social security numbers, telephone numbers and addresses,
4 and other similarly detailed information about extended family members obtained under
5 G.S. 48-3-303."

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

7 **"§ 48-3-203. Agency placement adoption.**

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

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

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

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

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

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

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

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

1 (f) An agency may release identifying information as provided in G.S.
2 48-9-104."

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

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

7 ...

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

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

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

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

22 "**§ 48-3-608. Revocation of consent.**

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

39 (b) In a direct placement, if:

40 (1) A preplacement assessment is required, and

41 (2) Placement occurs before the preplacement assessment is given to the
42 parent or guardian who is placing the minor,

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

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

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

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

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

23 **"§ 48-3-706. Revocation of relinquishments.**

24 (a) ~~A relinquishment of an infant who is in utero or is three months old or less at~~
25 ~~the time the relinquishment is executed may be revoked within 21 days following the~~
26 ~~day on which it is executed, inclusive of weekends and holidays.~~A relinquishment of
27 any ~~other~~infant who is in utero or any minor may be revoked within seven days
28 following the day on which it is executed, inclusive of weekends and holidays. If the
29 final day of the period falls on a weekend or a North Carolina or federal holiday, then
30 the revocation period extends to the next business day. The individual who gave the
31 relinquishment may revoke by giving written notice to the agency to which the
32 relinquishment was given. Notice may be given by personal delivery, overnight delivery
33 service, or registered or certified mail, return receipt requested. If notice is given by
34 mail, notice is deemed complete when it is deposited in the United States mail, postage
35 prepaid, addressed to the agency at the agency's address as given in the relinquishment.
36 If notice is given by overnight delivery service, notice is deemed complete on the date it
37 is deposited with the service as shown by the receipt from the service, with delivery
38 charges paid by the sender, addressed to the agency at the agency's address as given in
39 the relinquishment.

40 (b) If a person who has physical custody relinquishes a minor and thereafter
41 revokes a relinquishment pursuant to this section, the agency shall upon request return
42 the minor to that person. The revocation restores the right to physical custody and any

1 right to legal custody to the person who relinquished the minor and divests the agency
2 of any right to legal or physical custody and any further responsibility for the care and
3 support of the minor. In any subsequent proceeding, the court may award the person
4 who revoked reasonable attorneys' fees from a prospective adoptive parent with whom
5 the minor was placed who refuses to return the minor and from the agency if the agency
6 fails to cooperate in securing the minor's return.

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

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

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

18 **"§ 48-9-104. Release of identifying information.**

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

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

26 **"§ 48-9-109. Certain disclosures authorized.**

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

28 (1) ~~an~~An employee of a court, agency, or any other person from:

29 (1) a. Inspecting permanent, confidential, or sealed records, other than
30 records maintained by the State Registrar, for the purpose of
31 discharging any obligation under this ~~Chapter~~Chapter.

32 (2) b. Disclosing the name of the court where a proceeding for
33 adoption occurred, or the name of an agency that placed an
34 adoptee, to an individual described in G.S. 48-9-104 who can
35 verify his or her ~~identity~~identity.

36 (3) c. Disclosing or using information contained in permanent and
37 sealed records, other than records maintained by the State
38 Registrar, for statistical or other research purposes as long as the
39 disclosure will not result in identification of a person who is the
40 subject of the information and subject to any further conditions
41 the Department may reasonably impose.

1 (2) In agency placements, a parent or guardian placing a child for adoption
2 and the adopting parents from authorizing an agency to release
3 information or from releasing information to each other that could
4 reasonably be expected to lead directly to the identity of an adoptee, an
5 adoptive parent of an adoptee, or an adoptee's placing parent or
6 guardian. The consent to the release of identifying information shall be
7 in writing and signed prior to the adoption by any placing parent or
8 guardian and the adopting parents and acknowledged under oath in the
9 presence of an individual authorized to administer oaths or take
10 acknowledgments. Any consent to release identifying information
11 shall be filed under G.S. 48-2-305."

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

13 **"§ 48-10-101. Prohibited activities in placement.**

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

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

25 (b1) Notwithstanding subsections (a) and (b) of this section, this Article shall not
26 prohibit a person from advertising that the person desires to adopt. This subsection shall
27 apply only to a person with a current completed preplacement assessment finding that
28 person suitable to be an adoptive parent. The advertisement may be published only in a
29 periodical or newspaper or on radio, television, cable television, or the Internet. The
30 advertisement shall include a statement that (i) the person has a completed preplacement
31 assessment finding that person suitable to be an adoptive parent, (ii) identifies the name
32 of the agency that completed the preplacement assessment, and (iii) identifies the date
33 the preplacement assessment was completed. Any advertisement under this subsection
34 may state whether the person is willing to provide lawful expenses as permitted by G.S.
35 48-10-103.

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

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

39 **SECTION 15.** This act becomes effective November 1, 2001. Section 4
40 applies to adoptions in which the petition is pending or filed on or after that date.
41 Sections 3, 5, 7, 9, 12, and 13 apply to adoptions in which the petition is filed on or after
42 that date. Sections 6 and 8 apply to preplacement assessments prepared on or after that

- 1 date. Section 10 applies to consents executed on or after that date. Section 11 applies
- 2 to relinquishments executed on or after that date. Section 14 applies to advertising
- 3 published on or after that date.