

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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SENATE BILL 953

Short Title: Change Paternity Establishment.

(Public)

Sponsors: Senator Winner of Mecklenburg.

Referred to: Judiciary II.

April 22, 1993

A BILL TO BE ENTITLED

AN ACT REGARDING THE ESTABLISHMENT OF PATERNITY OF A CHILD BY
AFFIDAVIT, CHANGING THE LAWS OF EVIDENCE RELATING TO
PATERNITY TESTING IN CIVIL ACTIONS, AND GIVING PRIORITY TO THE
TRIAL OF PATERNITY ACTIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 130A-101(f) reads as rewritten:

"(f) If the mother was unmarried at all times from date of conception through date of birth, the name of the father shall not be entered on the certificate ~~without written consent, under oath, of both the father and the mother. The surname of the child shall be determined by the mother, except if the father's name is entered on the certificate, the mother and father shall agree upon the child's surname. If there is no agreement, the child's surname shall be the same as that of the mother.~~ unless the child's mother and father complete an affidavit acknowledging paternity, the completed affidavit acknowledging paternity is filed with the registrar, and the affidavit contains the following:

- (1) A sworn statement by the mother consenting to the assertion of paternity by the father and declaring that the father is the child's only possible father;
- (2) A statement by the father declaring that he is the natural father of the child;
- (3) Information explaining in plain language the effect of signing the affidavit, including a statement of parental rights and responsibilities and an acknowledgment of the receipt of this information; and
- (4) The social security numbers of both parents.

1 Upon the execution of the affidavit, the declaring father shall be listed as and
2 presumed to be the natural father of the child. The presumption of paternity arising
3 under this section may be rebutted in a legal action only by clear and convincing
4 evidence. The surname of the child shall be determined by the mother, except if the
5 father's name is entered on the certificate, the mother and father shall agree upon the
6 child's surname. If there is no agreement, the child's surname shall be the same as that
7 of the mother."

8 Sec. 2. G.S. 8-50.1 reads as rewritten:

9 **"§ 8-50.1. Competency of blood tests; jury charge; taxing of expenses as costs.**

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

23 (1) Where the issue of parentage is to be decided by a jury, where the
24 results of those blood tests and comparisons are not shown to be
25 inconsistent with the results of any other blood tests and comparisons,
26 and where the results of those blood tests and comparisons indicate
27 that the alleged-parent defendant cannot be the natural parent of the
28 child, the jury shall be instructed that if they believe that the witness
29 presenting the results testified truthfully as to those results, and if they
30 believe that the tests and comparisons were conducted properly, then it
31 will be their duty to decide that the alleged-parent is not the natural
32 parent; whereupon, the court shall enter the special verdict of not
33 guilty; and

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

43 ~~(b) In the trial of any civil action in which the question of parentage arises, the~~
44 ~~court before whom the matter may be brought, upon motion of the plaintiff, alleged-~~

1 ~~parent defendant, or other interested party, shall order that the alleged parent defendant,~~
2 ~~the known natural parent, and the child submit to any blood tests and comparisons~~
3 ~~which have been developed and adapted for purposes of establishing or disproving~~
4 ~~parentage and which are reasonably accessible to the alleged parent defendant, the~~
5 ~~known natural parent, and the child. The results of those blood tests and comparisons,~~
6 ~~including the statistical likelihood of the alleged parent's parentage, if available, shall be~~
7 ~~admitted in evidence when offered by a duly qualified, licensed practicing physician,~~
8 ~~duly qualified immunologist, duly qualified geneticist, or other qualified person. Upon~~
9 ~~receipt of a motion and the entry of an order under the provisions of this subsection, the~~
10 ~~court shall proceed as follows:~~

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

21 (2) ~~By requiring the plaintiff, alleged parent defendant or other interested~~
22 ~~party requesting blood tests and comparisons pursuant to this~~
23 ~~subsection to initially be responsible for any of the expenses thereof~~
24 ~~and upon the entry of a verdict of parentage or nonparentage, by taxing~~
25 ~~the expenses for blood tests and comparisons, in addition to any fees~~
26 ~~for expert witnesses allowed per G.S. 7A-314 whose testimonies~~
27 ~~supported the admissibility thereof, as costs in accordance with the~~
28 ~~provisions of G.S. 6-21.~~

29 (b1) In the trial of any civil action in which the question of parentage arises, the
30 court shall on motion of a party, and upon a proper showing, order the mother, the child,
31 and the putative father to submit to one or more blood or genetic marker tests, to be
32 performed by a duly certified physician or other expert. The court may, in its discretion,
33 order any person properly made a party to a paternity action to submit to such testing.
34 The court shall require the person requesting the genetic tests, including a blood test, to
35 pay the costs of the test. If the person requesting the test is indigent, the State shall pay
36 for the test. The court may, in its discretion, assess the costs of the tests to the party or
37 parties determined to be the parent or parents. Verified documentary evidence of the
38 chain of custody of the blood specimens obtained pursuant to this subsection shall be
39 competent evidence to establish the chain of custody. The testing expert's completed
40 and certified report of the results and conclusions of the paternity blood test is
41 admissible as evidence without additional testimony by the expert if the laboratory in
42 which the expert performed the test is accredited for parentage testing by the American
43 Association of Blood Banks. Accreditation may be established by verified statement or

1 reference to published sources. The results of the blood or genetic tests shall have the
2 following effect:

- 3 (1) If the court finds that the conclusion of all the experts, as disclosed by
4 the evidence based upon the test, is that it is unlikely that the alleged
5 parent is the parent of the child, the alleged parent is presumed not to
6 be the parent and the evidence shall be admitted. This presumption
7 may be rebutted only by clear and convincing evidence.
8 (2) If the experts disagree in their findings or conclusions, the question of
9 paternity shall be submitted upon all the evidence;
10 (3) If the tests show that the alleged parent is not excluded and that the
11 probability of the alleged parent's parentage is less than ninety-seven
12 percent (97%), this evidence shall be admitted by the court and shall
13 be weighed with other competent evidence;
14 (4) If the experts conclude that the genetic tests show that the alleged
15 parent is not excluded and that the probability of the alleged parent's
16 parentage is ninety-seven percent (97%) or higher, the alleged parent is
17 presumed to be the parent and this evidence shall be admitted. This
18 presumption may be rebutted only by clear and convincing evidence."

19 Sec. 3. G.S. 49-14 reads as rewritten:

20 **"§ 49-14. Civil action to establish paternity.**

21 (a) The paternity of a child born out of wedlock may be established by civil
22 action at any time prior to such child's eighteenth birthday. A certified copy of a
23 certificate of birth of the child shall be attached to the complaint. Such establishment of
24 paternity shall not have the effect of legitimation.

25 (b) Proof of paternity pursuant to this section shall be beyond a reasonable doubt.

26 (c) No such action shall be commenced nor judgment entered after the death of
27 the putative father.

28 (d) If the action to establish paternity is brought more than three years after birth
29 of a child, paternity shall not be established in a contested case without evidence from a
30 blood grouping test, or evidence that the putative father has declined an opportunity for
31 such testing.

32 (e) Actions to establish paternity brought under this Chapter shall have priority
33 for trial above all other matters except as otherwise required by law."

34 Sec. 4. This act is effective upon ratification and Section 2 applies to civil
35 paternity actions filed on or after that date.