

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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SENATE BILL 1712

Short Title: Conform Paternity Establishment.

(Public)

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Sponsors: Senator Winner of Mecklenburg.

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Referred to: Judiciary II.

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June 13, 1994

A BILL TO BE ENTITLED

1 AN ACT TO CONFORM NORTH CAROLINA LAWS REGARDING THE  
2 ESTABLISHMENT OF CHILD PATERNITY TO CERTAIN FEDERAL LAW  
3 REQUIREMENTS BY AMENDING THE NORTH CAROLINA LAWS OF  
4 EVIDENCE RELATING TO THE MANNER OF CONTESTING BLOOD OR  
5 GENETIC MARKER TESTS IN THE TRIAL OF CIVIL ACTIONS IN WHICH  
6 THE QUESTION OF PARENTAGE ARISES; BY PROVIDING FOR THE  
7 ENTRY OF JUDGMENT BY DEFAULT IN PATERNITY ACTIONS WHEN  
8 THE DEFENDANT FAILS TO FILE ANSWER; AND, BY GIVING FULL FAITH  
9 AND CREDIT TO OUT-OF-STATE PATERNITY DETERMINATIONS  
10 REGARDLESS OF METHOD OF ESTABLISHMENT.  
11

12 The General Assembly of North Carolina enacts:

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

14 **"§ 8-50.1. Competency of blood tests; jury charge; taxing of expenses as costs.**

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

1 qualified geneticist, or other duly qualified person. Upon receipt of a motion and the  
2 entry of an order under the provisions of this subsection, the court shall proceed as  
3 follows:

- 4 (1) Where the issue of parentage is to be decided by a jury, where the  
5 results of those blood tests and comparisons are not shown to be  
6 inconsistent with the results of any other blood tests and comparisons,  
7 and where the results of those blood tests and comparisons indicate  
8 that the alleged-parent defendant cannot be the natural parent of the  
9 child, the jury shall be instructed that if they believe that the witness  
10 presenting the results testified truthfully as to those results, and if they  
11 believe that the tests and comparisons were conducted properly, then it  
12 will be their duty to decide that the alleged-parent is not the natural  
13 parent; whereupon, the court shall enter the special verdict of not  
14 guilty; and
- 15 (2) By requiring the State or defendant, as the case may be, requesting the  
16 blood tests and comparisons pursuant to this subsection to initially be  
17 responsible for any of the expenses thereof and upon the entry of a  
18 special verdict incorporating a finding of parentage or nonparentage,  
19 by taxing the expenses for blood tests and comparisons, in addition to  
20 any fees for expert witnesses allowed per G.S. 7A-314 whose  
21 testimonies supported the admissibility thereof, as costs in accordance  
22 with G.S. 7A-304; G.S. Chapter 6, Article 7; or G.S. 7A-315, as  
23 applicable.

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

25 (b1) In the trial of any civil action in which the question of parentage arises, the  
26 court shall, on motion of a party, order the mother, the child, and the alleged father-  
27 defendant to submit to one or more blood or genetic marker tests, to be performed by a  
28 duly certified physician or other expert. The court shall require the person requesting  
29 the blood or genetic marker tests to pay the costs of the tests. The court may, in its  
30 discretion, tax as part of costs the expenses for blood or genetic marker tests and  
31 comparisons. Verified documentary evidence of the chain of custody of the blood  
32 specimens obtained pursuant to this subsection shall be competent evidence to establish  
33 the chain of custody. ~~The testing expert's completed and certified report of the results and~~  
34 ~~conclusions of the paternity blood test or genetic marker test is admissible as evidence without~~  
35 ~~additional testimony by the expert if the laboratory in which the expert performed the test is~~  
36 ~~accredited for parentage testing by the American Association of Blood Banks. Accreditation~~  
37 ~~may be established by verified statement or reference to published sources. Any person~~  
38 ~~contesting the results of a blood or genetic marker test has the right to subpoena the testing~~  
39 ~~expert pursuant to the Rules of Civil Procedure. Any party objecting to or contesting the~~  
40 procedures or results of the blood or genetic marker tests shall file with the court written  
41 objections setting forth the basis for the objections and shall serve copies thereof upon  
42 all other parties not less than 10 days prior to any hearing at which the results may be  
43 introduced into evidence. The person contesting the results of the blood or genetic  
44 marker tests has the right to subpoena the testing expert pursuant to the Rules of Civil

1 Procedure. If no objections are filed within the time and manner prescribed, the test  
2 results are admissible as evidence of paternity without the need for foundation  
3 testimony or other proof of authenticity or accuracy. The results of the blood or genetic  
4 marker tests shall have the following effect:

- 5 (1) If the court finds that the conclusion of all the experts, as disclosed by  
6 the evidence based upon the test, is that the probability of the alleged  
7 parent's parentage is less than eighty-five percent (85%), the alleged  
8 parent is presumed not to be the parent and the evidence shall be  
9 admitted. This presumption may be rebutted only by clear, cogent,  
10 and convincing evidence;
- 11 (2) If the experts disagree in their findings or conclusions, the question of  
12 paternity shall be submitted upon all the evidence;
- 13 (3) If the tests show that the alleged parent is not excluded and that the  
14 probability of the alleged parent's parentage is between eighty-five  
15 percent (85%) and ninety-seven percent (97%), this evidence shall be  
16 admitted by the court and shall be weighed with other competent  
17 evidence;
- 18 (4) If the experts conclude that the genetic tests show that the alleged  
19 parent is not excluded and that the probability of the alleged parent's  
20 parentage is ninety-seven percent (97%) or higher, the alleged parent is  
21 presumed to be the parent and this evidence shall be admitted. This  
22 presumption may be rebutted only by clear, cogent, and convincing  
23 evidence."

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

26 **"§ 110-132.1. Paternity determination by another state entitled to full faith and**  
27 **credit.**

28 A paternity determination made by another state:

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

30 (2) By any means that is recognized in that state as establishing paternity

31 shall be entitled to full faith and credit in this State."

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

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

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

42 In all cases wherein, pursuant to this rule, the clerk enters judgment  
43 by default upon a claim for debt which is secured by any pledge,  
44 mortgage, deed of trust or other contractual security in respect of

1 which foreclosure may be had, or upon a claim to enforce a lien for  
2 unpaid taxes or assessments under G.S. 105-414, the clerk may  
3 likewise make all further orders required to consummate foreclosure in  
4 accordance with the procedure provided in Article 29A of Chapter 1 of  
5 the General Statutes, entitled 'Judicial Sales.'

- 6 (2) By the Judge. – In all other cases the party entitled to a judgment by  
7 default shall apply to the judge therefor; but no judgment by default  
8 shall be entered against an infant or incompetent person unless  
9 represented in the action by a guardian **ad litem** or other such  
10 representative who has appeared therein. If the party against whom  
11 judgment by default is sought has appeared in the action, he (or, if  
12 appearing by representative, his representative) shall be served with  
13 written notice of the application for judgment at least three days prior  
14 to the hearing on such application. If, in order to enable the judge to  
15 enter judgment or to carry it into effect, it is necessary to take an  
16 account or to determine the amount of damages or to establish the truth  
17 of any averment by evidence or to take an investigation of any other  
18 matter, the judge may conduct such hearings or order such references  
19 as he deems necessary and proper and shall accord a right of trial by  
20 jury to the parties when and as required by the Constitution or by any  
21 statute of North Carolina. If the plaintiff seeks to establish paternity  
22 under Article 3 of Chapter 49 of the General Statutes and the  
23 defendant fails to appear, the judge shall enter judgment by default."

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