

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005

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HOUSE BILL 532  
Senate Judiciary I Committee Substitute Adopted 6/14/05

Short Title: Adjust Adoption Procedure.-AB

(Public)

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Sponsors:

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Referred to:

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March 9, 2005

A BILL TO BE ENTITLED

AN ACT TO STREAMLINE ADOPTION PROCEDURES BY REQUIRING  
CONSENT FROM THOSE PERSONS WHOSE PARENTAL STATUS HAS  
BEEN DETERMINED.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 48-2-206 reads as rewritten:

**"§ 48-2-206. Prebirth determination of right to consent.**

(a) ~~Anytime~~ At any time after six months from the date of conception as reasonably determined by a physician, the biological mother, agency, or adoptive parents chosen by the biological mother may file a special proceeding with the clerk requesting the court to determine whether consent of the biological father is required. The biological father shall be served with notice of the intent of the biological mother to place the child for adoption, allowing the biological father 15 days after service to assert a claim that his consent is required.

(b) The notice required under subsection (a) of this section shall contain the special proceeding case caption and file number and shall be substantially similar to the following language:

"[Name of the biological mother], the biological mother, is expected to give birth to a child on or about [birth due date]. You have been identified as the biological father. It is the intention of the biological mother to place the child for adoption. It is her belief that your consent to the adoption is not required. If you believe your consent to the adoption of this child is required pursuant to G.S. 48-3-601, you must notify the court in writing no later than 15 days from the date you received this notice that you believe your consent is required. A copy of your notice to the court must also be sent to the person or agency that sent you this notice. If you fail to notify the court within 15 days that you believe your consent is required, the court will rule that your consent is not required."

(c) If the biological father fails to respond within the time required, the court shall enter an order that the biological father's consent is not required for the adoption.

1 A biological father who fails to respond within the time required under this section is  
2 not entitled to notice under G.S. 48-2-401(c) of an adoption petition filed within three  
3 months of the birth of the ~~minor~~ minor or to participate in the adoption proceeding.

4 (d) If the biological father notifies the court within 15 days of his receipt of the  
5 notice required by subsection (a) of this section that he believes his consent to the  
6 adoption is required, on motion of the petitioner, the court shall hold a hearing to  
7 determine whether the consent of the biological father is required. Promptly on receipt  
8 of the petitioner's motion, the court shall set a date for the hearing no earlier than 60  
9 days nor later than 70 days after the biological father received the notice required by  
10 subsection (a) of this section and shall notify the petitioner and the biological father of  
11 the date, time, and place of the hearing. The notice of hearing to the biological father  
12 shall include a statement substantially similar to the following:

13 "To the biological father named above: You have told the court that you believe  
14 your consent is necessary for the adoption of the child described in the notice  
15 sent to you earlier. This hearing is being held to decide whether your consent is  
16 in fact necessary. Before the date of the hearing, you must have taken steps under  
17 G.S. 48-3-601 to establish that your consent is necessary or this court will decide  
18 that your consent is not necessary and the child can be adopted without it."

19 During the hearing, the court may take such evidence as necessary and enter an order  
20 determining whether or not the consent of the biological father is necessary. If the court  
21 determines that the consent of the biological father is not required, that individual is not  
22 entitled to receive notice under G.S. 48-2-401(c) of an adoption petition filed within  
23 three months of the birth of the minor or to participate in the adoption proceeding.

24 (e) The manner of service under this section shall be the same as set forth in  
25 G.S. 48-2-402.

26 (f) The jurisdiction provisions of Article 6A of Chapter 1 of the General Statutes  
27 and the venue provisions of Article 7 of Chapter 1 of the General Statutes rather than  
28 the provisions of Part 1 of this Article apply to proceedings under this section.

29 (g) Computation of periods of time provided for in this section shall be calculated  
30 as set forth in G.S. 1A-1, Rule 6.

31 (h) Transfer under G.S. 1-301.2 and appeal under G.S. 1-279.1 shall be as for an  
32 adoption proceeding.

33 (i) A determination by the court under this section that the consent of the  
34 biological father is not required shall only apply to an adoption petition filed within  
35 three months of the birth of the minor."

36 **SECTION 2.** Part 2 of Article 2 of Chapter 48 of the General Statutes is  
37 amended by adding a new section to read:

38 **"§ 48-2-207. Necessity of consent post-petition.**

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

43 (b) The court shall hold a hearing to take evidence and determine whether an  
44 individual's consent to an adoption is required if any of the following:

1           (1) Any individual described in G.S. 48-2-401(c)(3) who has been served  
2 with notice of the filing of the petition in accordance with  
3 G.S. 48-2-402 notifies the court within the time specified in the notice  
4 that he believes his consent to the adoption is required.

5           (2) Any individual who has not been served with the notice of the filing of  
6 the petition intervenes in the adoption proceeding alleging that his or  
7 her consent to the adoption is required.

8           (c) If the court determines that the consent of any individual is required, the  
9 adoption cannot proceed until such individual's consent is obtained or such individual's  
10 parental rights are terminated. If the individual whose consent is required did not have  
11 physical custody of the minor immediately prior to the placement of the minor with the  
12 prospective adoptive parents, a finding that such individual's consent is required does  
13 not entitle such individual to physical custody of the minor.

14           (d) If the court determines that the consent of any individual described in  
15 G.S. 48-2-401(c)(3) is not required, such individual shall not be entitled to receive  
16 notice of, or to participate in, further proceedings in the adoption."

17           **SECTION 3.** G.S. 48-2-304(c) reads as rewritten:

18           "(c) A petition to adopt a minor under Article 3 of this Chapter shall also  
19 state:state all of the following:

20           (1) A description of the source of placement and the date of placement of  
21 the adoptee with the ~~petitioner;~~ petitioner.

22           (2) That the provisions of the Interstate Compact on the Placement of  
23 Children, Article 38 of Chapter 7B of the General Statutes, were  
24 followed if the adoptee was brought into this State from another state  
25 for purposes of ~~adoption.~~ adoption, or that a statement is attached  
26 describing the circumstances of any noncompliance."

27           **SECTION 4.** G.S. 48-2-305(7) reads as rewritten:

28           "**§ 48-2-305. Petition for adoption; additional documents.**

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

31           (1) Any required affidavit of parentage executed under G.S. 48-3-206.

32           (2) Any required consent or relinquishment that has been executed.

33           (3) A certified copy of any court order terminating the rights and duties of  
34 a parent or a guardian of the adoptee.

35           (4) A certified copy of any court order or pleading in a pending  
36 proceeding concerning custody of or visitation with the adoptee.

37           (5) A copy of any required preplacement assessment certified by the  
38 agency that prepared it and any certificate of service required by  
39 G.S. 48-3-307 or an affidavit from the petitioner stating why the  
40 assessment is not available.

41           (6) A copy of any document containing the information required under  
42 G.S. 48-3-205 concerning the health, social, educational, and genetic  
43 history of the adoptee and the adoptee's original family which the  
44 petitioner received before the placement or at any later time, certified

1 by the person who prepared it, or if this document is not available, an  
2 affidavit stating the reason why it is not available.

3 (7) Any signed copy of the form required by the Interstate Compact on the  
4 Placement of Children, Article 38 of Chapter 7B of the General  
5 Statutes, authorizing a minor to come into this ~~State.~~State, or any  
6 statement required by G.S. 48-2-304(c) describing the circumstances  
7 of any noncompliance.

8 (8) A writing that states the name of any individual whose consent is or  
9 may be required, but who has not executed a consent or a  
10 relinquishment or whose parental rights have not been legally  
11 terminated, and any fact or circumstance that may excuse the lack of  
12 consent or relinquishment.

13 (9) In an adoption pursuant to Article 4 of this Chapter, a copy of any  
14 agreement to release past-due child support payments.

15 (10) Any consent to an agency by a placing parent and adopting parents to  
16 release identifying information under G.S. 48-9-109.

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

19 **SECTION 5.** G.S. 48-2-401 reads as rewritten:

20 "**§ 48-2-401. Notice by petitioner.**

21 (a) No later than 30 days after a petition for adoption is filed pursuant to Part 3 of  
22 this Article, the petitioner shall serve notice of the filing on the persons required to  
23 receive notice under subsections (b), (c), and (d) of this section.

24 (b) In all adoptions, the petitioner shall serve notice of the filing ~~on:~~on each of  
25 the following:

26 (1) Any individual whose consent to the adoption is required but has not  
27 been obtained, has been revoked in accord with this Chapter, or has  
28 become void as provided in this ~~Chapter;~~Chapter.

29 (2) The spouse of the petitioner if that spouse is required to join in the  
30 petition and petitioner is requesting that the joinder requirement be  
31 ~~waived;~~waived, provided the court for cause may waive this notice  
32 requirement.

33 (3) Any individual who has executed a consent or relinquishment, but who  
34 the petitioner has actually been informed has filed an action to set it  
35 aside for fraud or ~~duress;~~and duress.

36 (4) Any other person designated by the court who can provide information  
37 relevant to the proposed adoption.

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

40 (1) A minor whose consent is dispensed with under ~~G.S. 48-3-603(b)(2);~~  
41 G.S. 48-3-603(b)(2).

42 (2) Any agency that placed the ~~adopte;~~adoptee.

43 (3) A man who to the actual knowledge of the petitioner claims to be or is  
44 named as the biological or possible biological father of the minor, and

1 any biological or possible biological fathers who are unknown or  
2 whose whereabouts are unknown, but notice need not be served upon a  
3 man who has executed a consent, a relinquishment, or a notarized  
4 statement denying paternity or disclaiming any interest in the minor, ~~or~~  
5 a man whose parental rights have been legally terminated or who has  
6 been judicially determined not to be the minor's ~~parent; and parent,~~ or,  
7 provided the petition is filed within three months of the birth of the  
8 minor, a man whose consent to the adoption has been determined not  
9 to be required under G.S. 48-2-206.

10 (4) Any individual who the petitioner has been actually informed has legal  
11 or physical custody of the minor or who has a right of visitation or  
12 communication with the minor under an existing court order issued by  
13 a court in this State or another state.

14 (d) In the adoption of an adult, the petitioner shall also serve notice of the filing  
15 on any adult children of the prospective adoptive parent and any parent, spouse, or adult  
16 child of the adoptee who are listed in the petition to adopt; provided the court for cause  
17 may waive the requirement of notice to a parent of an adult adoptee.

18 (e) Only those persons identified in subsections (b), (c), and (d) of this section  
19 are entitled to notice of the proceeding.

20 (f) A notice required under this section must state that the person served must  
21 file a response to the petition within 30 days after service in order to participate in and  
22 to receive further notice of the proceeding, including notice of the time and place of any  
23 hearing."

24 **SECTION 6.** G.S. 48-2-405 reads as rewritten:

25 "**§ 48-2-405. Rights of persons entitled to notice.**

26 ~~A~~Except as provided in G.S. 48-2-206(c), 48-2-206(d), and 48-2-207(d), a person  
27 entitled to notice whose consent is not required may appear and present evidence only  
28 as to whether the adoption is in the best interest of the adoptee."

29 **SECTION 7.** This act becomes effective October 1, 2005, and applies to  
30 actions filed on or after that date.