

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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HOUSE BILL 1119

Short Title: Paternity Establishment Changes.

(Public)

Sponsors: Representatives Braswell; Berry, Colton, Cummings, Esposito, Gardner, Gottovi, Holt, Howard, Kuczmariski, McAllister, Russell, and C. Wilson.

Referred to: Courts and Justice.

April 19, 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

1 (4) The social security numbers of both parents.

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

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

10 **"§ 8-50.1. Competency of blood tests; jury charge; taxing of expenses as costs.**

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

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

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

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

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

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

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

1 Association of Blood Banks. Accreditation may be established by verified statement or  
2 reference to published sources. The results of the blood or genetic tests shall have the  
3 following effect:

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

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

22 **"§ 49-14. Civil action to establish paternity.**

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

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

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

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

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

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