

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 108*

Short Title: Adoptions to District Ct.

(Public)

Sponsors: Senators Martin of Guilford; Winner, Allran, and Cooper.

Referred to: Judiciary I/Constitution.

February 1, 1995

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT ADOPTIONS SHALL BE IN THE DISTRICT COURT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 1-272 reads as rewritten:

"§ 1-272. Appeal from clerk to judge.

Except for appeals from judgments of the clerk of superior court in adoption proceedings, Appeals appeals lie to the judge of the superior court having jurisdiction, either in session or vacation, from judgments of the clerk of the superior court in all matters of law or legal inference. Appeals from judgments of the clerk of superior court in adoption proceedings lie to the judge of the district court having jurisdiction, either in session or vacation. In case of such transfer or appeal neither party need give an undertaking for costs; and the clerk shall transmit, on the transfer or appeal, to the superior court, or to the judge thereof, the pleadings, or other papers, on which the issues of fact or of law arise. An appeal must be taken within 10 days after the entry of the order or judgment of the clerk upon due notice in writing to be served on the appellee and a copy of which shall be filed with the clerk of the superior court. But an appeal can only be taken by a party aggrieved, who appeared and moved for, or opposed, the order or judgment appealed from, or who, being entitled to be heard thereon, had no opportunity of being heard, which fact may be shown by affidavit or other proof."

Sec. 2. G.S. 1-273 reads as rewritten:

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1 **"§ 1-273. Clerk to transfer issues of fact to civil issue docket.**

2 (a) Except as provided in subsection (b) of this section, If-if issues of law and of
3 fact, or of fact only, are raised before the clerk, ~~he~~the clerk shall transfer the case to the
4 civil issue docket for trial of the issues at the next ensuing session of the superior court.

5 (b) If issues of law and of fact, or of fact only, are raised before the clerk in
6 adoption proceedings, then the clerk shall transfer the case to the civil issue docket for
7 trial of the issues at the next ensuing session of the district court."

8 Sec. 3. G.S. 48-4(a) reads as rewritten:

9 "(a) Any person over 18 years of age may petition in a special proceeding in the
10 ~~superior-district~~ court to adopt a minor child and may also petition for a change of the
11 name of such child. If the petitioner has a husband or wife living, competent to join in the
12 petition, such spouse shall join in the petition."

13 Sec. 4. G.S. 48-12 is amended by adding the following new subsection to read:

14 "(d) If the child who is the subject of the adoption is also the subject of a pending
15 district court case or proceeding under Chapter 7A of the General Statutes, then the
16 district court having jurisdiction under Chapter 7A shall retain jurisdiction until the final
17 order of adoption is entered."

18 Sec. 5. G.S. 48-15(a) reads as rewritten:" (a) The caption of the petition shall
19 be substantially as follows:

20 STATE OF NORTH CAROLINA
21 IN THE ~~SUPERIOR-DISTRICT~~ COURT
22 COUNTY
23 BEFORE THE CLERK
24
25 (Full name of adopting father)
26 and
27 PETITION FOR ADOPTION
28 (Full name of adopting mother)
29 FOR THE ADOPTION OF
30

31 (Full name of child as used in proceeding)".Sec. 6. G.S. 48-26 reads as rewritten:

32 **"§ 48-26. Procedure for opening record for necessary information.**

33 (a) Any necessary information in the files or the record of an adoption proceeding
34 may be disclosed, to the party requiring it, upon a written motion in the cause before the
35 clerk of original jurisdiction. The movant must serve a copy of the motion, with proof of
36 service, upon the Department of Human Resources, and the county department of social
37 services or the licensed child placing agency which prepared the report in response to the
38 order of reference issued pursuant to G.S. 48-16. The clerk of superior court shall give at
39 least five days' notice to the Department of Human Resources and county department of
40 social services or licensed child placing agency of every hearing on this motion, whether
41 the hearing is before the clerk or a judge of the ~~superior-district~~ court, and the Department
42 of Human Resources and the county department of social services or licensed child
43 placing agency shall be entitled to appear and be heard in response to the motion. After

1 hearing, the clerk may issue an order to open the record. Such order must be reviewed by
2 a judge of the ~~superior~~-district court and if, in the opinion of said judge, it be to the best
3 interest of the child or of the public to have such information disclosed, ~~he~~-the judge may
4 approve the order to open the record.

5 (b) The original order to open the record must be filed with the proceedings in the
6 office of the clerk of the superior court. If the clerk shall refuse to issue such order, the
7 party requesting such order may appeal to the judge who may order that the record be
8 opened, if, in ~~his~~-the judge's opinion, it be to the best interest of the child or of the
9 public."

10 Sec. 7. This act becomes effective October 1, 1995, and applies to adoption
11 petitions filed on or after that date.