

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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SENATE BILL 618

Short Title: Post-Adoption Contacts.

(Public)

Sponsors: Senator Kinnaird.

Referred to: Judiciary II.

April 19, 2011

1 A BILL TO BE ENTITLED
2 AN ACT TO ALLOW AN ADOPTIVE PARENT AND A BIRTH RELATIVE TO ENTER
3 INTO A WRITTEN AGREEMENT TO PROVIDE FOR POST-ADOPTION CONTACT
4 AND COMMUNICATION AND TO MAKE OTHER CONFORMING STATUTORY
5 CHANGES.

6 The General Assembly of North Carolina enacts:

7 **SECTION 1.** Chapter 48 of the General Statutes is amended by adding a new
8 Article to read:

9 "Article 11.

10 "Post-Adoption Contacts.

11 "**§ 48-11-100. Definitions.**

12 For purposes of this Article, the following definitions apply:

- 13 (1) Birth relative. – The biological parent, grandparent, sibling, or any other
14 member of an adoptee's biological family related to the adoptee by blood or
15 marriage.
16 (2) Post-adoption contacts agreement. – A voluntary written agreement that
17 allows specifically described post-adoption contact.
18 (3) Post-adoption contacts. – Visitation, communication, or any other contact or
19 conveyance of information regarding an adoptee.

20 "**§ 48-11-101. Post-adoption contacts agreement; terms; conditions.**

21 (a) A prospective adoptive parent and a birth relative may enter into a post-adoption
22 contacts agreement before or at the time a decree of adoption is granted. A biological parent
23 who has not reached 18 years of age shall have legal capacity to enter into a post-adoption
24 contacts agreement and shall be as fully bound by the agreement as if the biological parent had
25 attained 18 years of age.

26 (b) A post-adoption contacts agreement may include the following provisions:

- 27 (1) Visitation between the adoptee and a birth relative.
28 (2) Communication, including the exchange of letters and telephone contact
29 between the adoptee and a birth relative.
30 (3) The sharing of information about the adoptee or the birth relative by parties
31 to the agreement.

32 (c) A post-adoption contacts agreement shall include the following in bold type:

- 33 (1) 'The failure of an adoptive parent, birth relative, or the adoptee to follow the
34 terms of this agreement or modifications to the agreement shall not be
35 grounds for setting aside a final order of adoption.'



- 1 (2) 'A disagreement between the parties or litigation brought to enforce, modify,
2 or terminate this agreement shall not affect the validity of the adoption or
3 serve as a basis for orders affecting the custody of the adoptee.'
- 4 (3) 'The parties agree, in good faith, to participate in mediation or other
5 appropriate dispute resolution proceedings to resolve any dispute that may
6 arise relating to the agreement.'
- 7 (4) 'A court will not act on a motion to modify, enforce, or terminate this
8 agreement unless the petitioner has participated or attempted to participate in
9 good faith in mediation or other appropriate dispute resolution proceedings
10 to resolve any dispute.'
- 11 (d) A post-adoption contacts agreement is enforceable only if it is approved by a district
12 court judge and incorporated in a court order signed by a district court judge.
- 13 (e) In approving a post-adoption contacts agreement, the court shall make each of the
14 following findings of fact:
- 15 (1) The parties to the agreement have appeared before the court personally,
16 unless the court, for good cause, waives the requirement that the parties
17 appear personally.
- 18 (2) Each adoptive parent has consented to the granting of post-adoption contact.
- 19 (3) The birth relative has acknowledged in writing that the birth relative
20 understands that the final order of adoption is irrevocable regardless of
21 whether the adoptive parent fails to abide by the post-adoption contacts
22 agreement.
- 23 (4) The adoptive parent has acknowledged in writing that the adoptive parent
24 understands that the post-adoption contacts agreement, when approved by
25 the court, grants the birth relative the right to seek enforcement in court of
26 the post-adoption contacts specified in the agreement.
- 27 (5) The court has determined that the adoptee's best interests would be served by
28 approving the post-adoption contacts agreement.
- 29 (f) The court may approve a post-adoption contacts agreement after considering the
30 following conditions and making findings of fact regarding each condition:
- 31 (1) Whether there is a significant emotional attachment between the adoptee and
32 the birth relative to whom the agreement gives post-adoption contacts or that
33 the adoptee is part of a sibling group to whom post-adoption contacts are
34 being granted and it is in the adoptee's best interests to be treated similarly to
35 his or her siblings.
- 36 (2) Whether the adoptee, if the adoptee is 12 years of age or older, consents to
37 the post-adoption contacts agreement.
- 38 (3) Whether the county department of social services or the licensed
39 child-placing agency that placed the adoptee for adoption, or in the case of a
40 direct placement adoption, the agency making the report to the court under
41 G.S. 48-2-501, has reviewed the post-adoption contacts agreement and either
42 recommended approval of the agreement or stated in writing its reasons for
43 not recommending approval.
- 44 (4) Whether the adoptee is represented by a court-appointed guardian ad litem
45 who has reviewed the post-adoption contacts agreement and either
46 recommended approval of the agreement or stated in writing the guardian ad
47 litem's reasons for not recommending approval.
- 48 (g) The Administrative Office of the Courts may adopt rules and shall prescribe and
49 supply forms for establishing a civil action pursuant to this section.
- 50 (h) The entire record of a proceeding involving approval, modification, enforcement, or
51 termination of a post-adoption contacts agreement under this Article shall not be a matter of

1 public record. The clerk of court shall maintain the record of the proceeding separately from
2 other records and withhold the record from public inspection. The record may be examined
3 only by order of the court, by the parties to the post-adoption contacts agreement, or by their
4 attorneys or guardians ad litem.

5 **"§ 48-11-102. Modification, enforcement, and termination.**

6 (a) A party to a post-adoption contacts agreement may file a new civil action in district
7 court for the purpose of modifying, enforcing, or terminating a post-adoption contacts
8 agreement after the party has participated or attempted to participate in good faith in mediation
9 or other appropriate dispute resolution proceedings to resolve any dispute.

10 (b) In a proceeding under this section, the court may modify a post-adoption contacts
11 agreement if the court finds by a preponderance of the evidence either of the following:

12 (1) There has been a substantial change of circumstances and the modification is
13 necessary to serve the best interests of the adoptee, and the modification
14 would not enlarge, expand, or increase the amount of contact permitted by
15 the post-adoption contacts agreement, place new obligations on the adoptive
16 parent, or undermine the adoptive parent's authority.

17 (2) The parties to the agreement, including the adoptee, if the adoptee is 12
18 years of age or older, have agreed to the modification.

19 (c) The court may enforce a post-adoption contacts agreement in a proceeding under
20 this section if the court finds by clear, cogent, and convincing evidence that enforcement of the
21 post-adoption contacts agreement is in the best interests of the adoptee and enforcement would
22 not enlarge, expand, or increase the amount of contact permitted by the post-adoption contacts
23 agreement, place new obligations on the adoptive parent, or undermine the adoptive parent's
24 authority.

25 (d) The court may terminate a post-adoption contacts agreement in a proceeding under
26 this section if the court finds by clear, cogent, and convincing evidence that termination of the
27 post-adoption contacts agreement is in the best interests of the adoptee or the parties to the
28 agreement, including the adoptee if the adoptee is 12 years of age or older, have agreed to
29 terminate the agreement.

30 (e) In any proceeding under this section to modify, enforce, or terminate a
31 post-adoption contacts agreement, the court may receive documentary evidence or written
32 reports to support modification, enforcement, or termination of the agreement. No testimony or
33 evidentiary hearing shall be required unless the court finds after review of the documentary
34 evidence or written reports that a hearing is necessary to determine the issues raised in the
35 motion before the court. The court shall not order further investigation or evaluation by any
36 public or private agency or individual absent a finding by clear, cogent, and convincing
37 evidence that the best interests of the adoptee may be protected or advanced only by the inquiry
38 and that the inquiry would not disturb the stability of the adoptee's home to the detriment of the
39 adoptee.

40 (f) The court shall not award monetary damages. However, the court may award
41 attorneys' fees and costs to the prevailing party if the court, in its discretion, determines that it
42 would prevent frivolous or harassing litigation.

43 **"§ 48-11-103. Effect of failure to comply.**

44 The court shall not set aside a decree of adoption, revoke a written consent to an adoption,
45 rescind a relinquishment, or modify an order to terminate parental rights or any other prior
46 court order for failure of a birth relative, an adoptive parent, or an adoptee to comply with any
47 or all of the original terms of or subsequent modifications to the post-adoption contacts
48 agreement."

49 **SECTION 2.** G.S. 48-1-100 is amended by adding a new subsection to read:

1 "(e) Nothing in this Chapter shall be construed to prevent an adoptive parent and a birth
2 relative from entering into a post-adoption contacts agreement as provided in Article 11 of this
3 Chapter."

4 **SECTION 3.** G.S. 7B-1100 reads as rewritten:

5 "**§ 7B-1100. Legislative intent; construction of Article.**

6 (a) The General Assembly hereby declares as a matter of legislative policy with respect
7 to termination of parental rights:

8 (1) The general purpose of this Article is to provide judicial procedures for
9 terminating the legal relationship between a juvenile and the juvenile's
10 biological or legal parents when the parents have demonstrated that they will
11 not provide the degree of care which promotes the healthy and orderly
12 physical and emotional well-being of the juvenile.

13 (2) It is the further purpose of this Article to recognize the necessity for any
14 juvenile to have a permanent plan of care at the earliest possible age, while
15 at the same time recognizing the need to protect all juveniles from the
16 unnecessary severance of a relationship with biological or legal parents.

17 (3) Action which is in the best interests of the juvenile should be taken in all
18 cases where the interests of the juvenile and those of the juvenile's parents or
19 other persons are in conflict.

20 (4) This Article shall not be used to circumvent the provisions of Chapter 50A
21 of the General Statutes, the Uniform Child-Custody Jurisdiction and
22 Enforcement Act.

23 (b) Nothing in this Article shall be construed to prevent the court in a proceeding under
24 this Article for termination of parental rights from approving a post-adoption contacts
25 agreement as provided in Article 11 of Chapter 48 of the General Statutes."

26 **SECTION 4.** G.S. 7B-1110(a) is amended by adding a new subdivision to read:

27 "(a) After an adjudication that one or more grounds for terminating a parent's rights
28 exist, the court shall determine whether terminating the parent's rights is in the juvenile's best
29 interest. In making this determination, the court shall consider the following:

30 ...

31 (5a) Whether or not the prospective adoptive parent and the birth relative, and the
32 adoptee if the adoptee is 12 years of age or older, intend to enter into a
33 post-adoption contacts agreement and the impact of that agreement on the
34 best interests of the child regarding termination of parental rights of the
35 parent. For purposes of this subdivision, the term 'birth relative' shall have
36 the same meaning as defined in G.S. 48-11-100(1).

37 "

38 **SECTION 5.** G.S. 7B-1112 reads as rewritten:

39 "**§ 7B-1112. Effects of termination order.**

40 (a) An order terminating the parental rights completely and permanently terminates all
41 rights and obligations of the parent to the juvenile and of the juvenile to the parent arising from
42 the parental relationship, except that the juvenile's right of inheritance from the juvenile's
43 parent shall not terminate until a final order of adoption is issued. The parent is not thereafter
44 entitled to notice of proceedings to adopt the juvenile and may not object thereto or otherwise
45 participate therein:

46 (1) If the juvenile had been placed in the custody of or released for adoption by
47 one parent to a county department of social services or licensed
48 child-placing agency and is in the custody of the agency at the time of the
49 filing of the petition or motion, including a petition or motion filed pursuant
50 to G.S. 7B-1103(6), that agency shall, upon entry of the order terminating
51 parental rights, acquire all of the rights for placement of the juvenile as the

1 agency would have acquired had the parent whose rights are terminated
2 released the juvenile to that agency pursuant to the provisions of Part 7 of
3 Article 3 of Chapter 48 of the General Statutes, including the right to consent
4 to the adoption of the juvenile.

- 5 (2) Except as provided in subdivision (1) above, upon entering an order
6 terminating the parental rights of one or both parents, the court may place
7 the juvenile in the custody of the petitioner or movant, or some other suitable
8 person, or in the custody of the department of social services or licensed
9 child-placing agency, as may appear to be in the best interests of the
10 juvenile.

11 (b) Nothing in this section shall be construed to prevent the parent and the prospective
12 adoptive parent from entering into a post-adoption contacts agreement in accordance with
13 Article 11 of Chapter 48 of the General Statutes."

14 **SECTION 6.** G.S. 1-301.2(b) reads as rewritten:

15 "(b) Transfer. – Except as provided in subsections (g) and (h) of this section, when an
16 issue of fact, an equitable defense, or a request for equitable relief is raised in a pleading in a
17 special proceeding or in a pleading or written motion in an adoption proceeding, the clerk shall
18 transfer the proceeding to the appropriate court. However, when an issue of fact, an equitable
19 defense, or a request for equitable relief is raised in a pleading or written motion in an approval
20 of a post-adoption contacts agreement under Article 11 of Chapter 48 of the General Statutes,
21 the clerk shall transfer the proceeding to domestic court, and the court shall ensure that the
22 identity of the parties to the agreement and the proceeding are confidential. In court, the
23 proceeding is subject to the provisions in the General Statutes and to the rules that apply to
24 actions initially filed in that court."

25 **SECTION 7.** This act is effective when it becomes law.