

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001**

H

1

HOUSE BILL 1164

Short Title: Postadoption Privileges.

(Public)

Sponsors: Representative Baddour.

Referred to: Judiciary II.

April 12, 2001

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR POSTADOPTION PRIVILEGES IN CERTAIN
CIRCUMSTANCES.

The General Assembly of North Carolina enacts:

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

"Article 11.

"Postadoption Privileges.

"§ 48-11-100. Definitions; construction.

(a) For purposes of this Article, unless the context requires otherwise:

(1) 'Birth relative' means birth parents, grandparents, siblings, and other
members of the child's birth family.

(2) 'Court' means the district court approving a petition for adoption of a
minor under this Chapter or presiding over a proceeding for
termination of parental rights pursuant to Article 11 of Chapter 7B of
the General Statutes.

(3) 'Postadoption privileges agreement' means a written agreement of the
adoptive parents and one or more birth relatives, and the child if the
child is 12 years of age or older, to allow specifically described
postadoption privileges.

(4) 'Postadoption privileges' means visitation, communication, other
contact, or conveyance of information with respect to a child who has
been adopted.

(b) Nothing in this Chapter or in Chapter 7B of the General Statutes shall be
construed to prevent the adoptive parents and the birth relatives, and the child if the
child is 12 years of age or older, from entering into a postadoption privileges agreement.

A postadoption privileges agreement is enforceable only if it is approved by the court
and signed by a district court judge.

"§ 48-11-101. Approval of agreement by the court.

The court may approve a postadoption privileges agreement either prior to or at the time that a decree of adoption is granted only if all of the following conditions are satisfied:

- (1) The court determines that the child's best interest would be served by granting postadoption privileges.
- (2) The court finds that there is a significant emotional attachment between the child and the person or persons to whom the agreement gives postadoption privileges.
- (3) Each adoptive parent consents to the granting of postadoption privileges.
- (4) The adoptive parents and the birth relatives execute a postadoption privileges agreement and file the agreement with the court.
- (5) The child, if the child is 12 years of age or older, consents to the postadoption privileges agreement. However, the court may waive the requirement for the child's consent if the court finds that the child is not capable of consenting or that requiring the child's consent would not be in the child's best interest.
- (6) The child is represented by a court-appointed guardian ad litem and that person recommends the granting of postadoption privileges.
- (7) If the child was placed for adoption by a county department of social services or a licensed child-placing agency, that department or agency recommends the granting of postadoption privileges.
- (8) The agreement includes an acknowledgment by the birth relatives that the adoption is irrevocable regardless of whether the adoptive parents do not abide by the postadoption privileges agreement.
- (9) The agreement includes an acknowledgment by the adoptive parents that the agreement, when approved by the court, grants the birth relative the right to seek enforcement of the postadoption privileges specified in the agreement.

"§ 48-11-102. Modification; enforcement; termination.

(a) A birth relative or an adoptive parent may file a civil action in district court for the purpose of modifying, enforcing, or terminating a court-approved postadoption privileges agreement.

(b) In a proceeding under this section:

- (1) The court may modify, enforce, or terminate a postadoption privileges agreement only if the court finds that the party seeking relief has participated, or attempted to participate, in good faith in mediating the dispute giving rise to the action.
- (2) The court may modify or terminate a postadoption privileges agreement only if the court finds that the modification or termination is necessary to serve the best interest of the adopted child.

1 (3) The court shall not award monetary damages.

2 (4) The court may require that notice and an opportunity to be heard be
3 given to the agency that placed the child for adoption or any other
4 person or agency that might aid the court in its decision.

5 (5) The court shall appoint a guardian ad litem to represent the child's best
6 interest.

7 **"§ 48-11-103. Effect of failure to comply.**

8 Failure to comply with the terms of an agreement entered into pursuant to this
9 Article is not grounds for setting aside an adoption decree or revoking a written consent
10 to an adoption."

11 **SECTION 2.** G.S. 7B-1100 reads as rewritten:

12 **"§ 7B-1100. Legislative intent; construction of Article.**

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

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

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

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

28 (4) This Article shall not be used to circumvent the provisions of Chapter
29 50A of the General Statutes, the Uniform Child-Custody Jurisdiction
30 and Enforcement Act.

31 (b) Nothing in this Article shall be construed to prevent the court in a proceeding
32 under this Article for termination of parental rights from approving a postadoption
33 privileges agreement as provided in Article 11 of Chapter 48 of the General Statutes."

34 **SECTION 3.** This act is effective when it becomes law.